

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE: . Case No. 22-31641-MVL-7
. .
. .
GOODMAN NETWORKS, INC., . U.S. Bankruptcy Court
DBA GOODMAN SOLUTIONS, . 1100 Commerce Street
. Dallas, Texas 75242
. .
Debtor. . Wednesday, October 11, 2023
. . 9:00 A.M.
.

TRANSCRIPT OF HEARING ON AMENDED MOTION TO COMPROMISE
CONTROVERSY WITH PROSPERITY BANK AND UMB BANK, NATIONAL
ASSOCIATION FILED BY TRUSTEE SCOTT M. SEIDEL (300), DAY 2
BEFORE THE HONORABLE MICHELLE V. LARSON
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES ON NEXT PAGE.

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1 (Proceedings commenced at 9:00 a.m.)

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas Dallas Division is now
4 in session. The Honorable Michelle Larson presiding.

5 THE COURT: Please be seated. Good morning,
6 everyone. We are here on our 9 o'clock docket. Oh, so early.
7 All right. We have one matter on the docket this morning.
8 That's case number 22-31641 Goodman Networks, Inc., and Goodman
9 Networks. I'll take appearances for the record and I'll start
10 with those in the courtroom.

11 MR. RUKAVINA: Your Honor, good morning.

12 Davor Rukavina and Thomas Berghman for Mr. Seidel.
13 Mr. Seidel is stuck behind a wreck in North Dallas. He sends
14 his regrets, but he is on his way.

15 THE COURT: Okay.

16 MR. RUKAVINA: Also, with Your Honor's permission,
17 Mr. Berghman will have to leave at 11 for a 341 in the new case
18 he filed. He'll be back as soon as that's over.

19 THE COURT: Is it in the Northern District?

20 MR. BERGHMAN: Jeff Morris, Your Honor. Yes.

21 THE COURT: Oh, the wrong division.

22 MR. BERGHMAN: That's right.

23 THE COURT: Oh, okay. All right.

24 MR. BERGHMAN: My sincerest apologies.

25 THE COURT: So you may have a little ways to go. No

1 worries.

2 MR. GUFFY: Good morning, Your Honor.

3 Philip Guffy from Hunton Andrews Kurth. Along with
4 me is my colleague, Brian Clarke. Possibly appearing on the
5 phone today will be Mr. Paul Silverstein, as well as Eric
6 Schaffer from the Stonecipher Law Firm for UMB Bank National
7 Association as Indenture Trustee and the Majority Bondholder
8 Group.

9 THE COURT: Good morning.

10 MS. ARGEROPLOS: Good morning, Your Honor.

11 Victoria Argeroplos and Bruce Ruzinsky of Jackson
12 Walker on behalf of Prosperity Bank. With us in the courtroom
13 is two of the Bank's legal department and then our two
14 witnesses, Mr. Bates and Mr. Montgomery are in the conference
15 room next door.

16 THE COURT: Okay. Excellent.

17 MS. ARGEROPLOS: And we'll start with Mr. Bates
18 today.

19 THE COURT: All right. Thank you.

20 MR. HILLYER: Good morning, Your Honor.

21 Cam Hillyer and my partner Adam Langley on behalf of
22 Butler Snow. And we represent FedEx Supply Chain Logistics and
23 Electronics.

24 THE COURT: Good morning.

25 MR. BAKER: Good morning, Your Honor.

1 James Baker of DLA Piper on behalf of ARRIS. I
2 believe I'm also joined this morning via telephone by my
3 colleague Noah Schottenstein.

4 THE COURT: Good morning. Is there anyone on WebEx
5 who would like to make an appearance this morning?

6 MS. LaMANNA: Good morning, Your Honor.

7 Kathleen LaManna of Shipman & Goodwin for US Bank as
8 collateral agent.

9 THE COURT: Good morning again.

10 All right, ladies and gentlemen. We're here on the
11 Trustees 9019 with Prosperity Bank and UMB. I think when we --
12 I'm drawing a blank. When we last broke, we were in the middle
13 of the direct testimony, as I recall. I'm losing it.

14 MR. RUKAVINA: That's okay, Your Honor. Mr. Seidel's
15 testimony is completed and I have rested my case.

16 THE COURT: Right. And --

17 MS. ARGEROPLOS: And so yeah, we're --

18 THE COURT: Right. We didn't start a new witness.
19 I'm sorry.

20 MR. RUKAVINA: This is what happens at 9 a.m.

21 THE COURT: Okay. I was like, why do I not remember
22 the witness's name? There was none. There we go. That
23 explains it. All right. Okay. And so you said we're going to
24 start with Mr. --

25 MS. ARGEROPLOS: Mr. Bates.

Bates - Direct/Argeroplos

8

1 THE COURT: Bates. All right.

2 MS. ARGEROPLOS: Prosperity will call Lawrence Bates.

3 THE COURT: All right. That's what y'all get for
4 starting early.

5 Good morning, Mr. Bates. If you could take the stand
6 and then raise your right hand for me. Good morning.

7 LAWRENCE MORRIS BATES, PROSPERITY'S WITNESS, SWORN

8 THE COURT: Thank you very much. Please be seated.

9 THE WITNESS: Your Honor, can I go get my glasses?
10 I'm sorry.

11 THE COURT: Of course.

12 THE WITNESS: Okay.

13 THE COURT: Of course. No worries.

14 DIRECT EXAMINATION

15 BY MS. ARGEROPLOS:

16 Q Okay. Mr. Bates, would you please state your full name
17 for the record?

18 A Lawrence Morris Bates.

19 Q And did you listen to Mr. Seidel's testimony yesterday?

20 A No, I did not.

21 Q Did you discuss his testimony with anyone?

22 A No, I did not.

23 Q Thank you. What is your title at Prosperity Bank?

24 A Executive vice president.

25 Q And what are your duties as executive vice president?

Bates - Direct/Argeroplos

9

1 A I run two lending groups for the company and just take
2 care of our clients.

3 Q Where did you work before Prosperity?

4 A Our predecessor company was called LegacyTexas that we
5 sold to Prosperity Bank on November 1st of 2019.

6 Q Great. And where did you work before then?

7 A Our predecessor company was called --

8 THE COURT: Pardon me.

9 MS. ARGEROPLOS: Speak up?

10 THE COURT: Okay.

11 MS. ARGEROPLOS: Apologies, Your Honor.

12 THE COURT: Oh, no worries.

13 BY MS. ARGEROPLOS:

14 Q Where did you work before LegacyTexas?

15 A Our predecessor company before that was ViewPoint
16 Financial Group, which acquired Legacy Bank and we restyled our
17 company LegacyTexas. And prior to that was a company called
18 Highlands Bank here in Dallas that I was a founder of in 2007
19 that we merged with ViewPoint Financial Group.

20 Q Great. And so how long does -- how far back does your
21 relationship go with James Goodman and his entities?

22 A Back to Highlands Bank. So probably ten years.

23 Q There is a small --

24 A Maybe 12.

25 Q Thank you. There's a small binder at the far left of that

Bates - Direct/Argeroplos 10

1 shelf back there. Okay. And would you just flip through the
2 Tabs 1 through 15 and just verify for the Court that you're
3 familiar with the loan documents for the Genesis Networks
4 Telecom Services LLC and Genesis Networks Global Services LLC
5 loans from Prosperity Bank.

6 A Sure. Which tab is it?

7 Q Tabs 1 through 15.

8 THE COURT: When you have a moment, Mr. Bates, if you
9 could pull the microphone a little closer.

10 THE WITNESS: Oh sure.

11 THE COURT: Thank you.

12 THE WITNESS: Sure. I'm seeing all letters. Wrong
13 one?

14 THE COURT: Should be a thin one. You'll have to
15 look at the --

16 MS. ARGEROPLOS: That's the one.

17 THE COURT: Yeah. The front page. Right.

18 (Pause)

19 THE COURT: And for the record, Ms. Argeroplos, are
20 you having him review Exhibits 1 through 5?

21 MS. ARGEROPLOS: 1 through 15.

22 THE COURT: 1 through 15. Okay. All of them. All
23 right.

24 (Pause)

25 THE WITNESS: Yes, these look accurate.

Bates - Direct/Argeroplos

11

1 MS. ARGEROPLOS: Thank you.

2 BY MS. ARGEROPLOS:

3 Q So right now, you managed the -- or I guess not right now,
4 but in 2022, you managed the relationship, the loan
5 relationship with the two Genesis borrowers, right?

6 A Correct.

7 Q And if I say the Genesis borrowers, you'll know I'm
8 talking about Genesis Networks Telecom Services and Genesis
9 Networks Global Services?

10 A Correct.

11 Q Okay. And were you the only person in -- who manage that
12 relationship from Prosperity?

13 A No. Taylor Burns, who works for me, he was involved with
14 it and helped me with it. That's why he's on some of these
15 loan documents.

16 Q Anybody else?

17 A No.

18 Q What about Jordan Yenne?

19 A He was more involved in the Goodman Networks relationship.

20 Q Okay. Do you remember the execution of deposit account
21 control agreements in favor of the Bondholders in 2017 by
22 Goodman Networks?

23 A I'm sorry. Say that again?

24 Q Are you familiar with the 2017 deposit account control
25 agreements executed by Goodman Networks in favor of the

Bates - Direct/Argeroplos

12

1 Bondholders?

2 A Yes, I know about them. Jordan executed them.

3 Q And those were executed when the debt was held -- when the
4 Goodman Networks relationship and the -- or it was held by
5 LegacyTexas Bank. Is that right?

6 A That's correct.

7 Q Okay. Let's see. And then let's turn to -- actually, I'm
8 going to hand you one of the Trustees exhibits.

9 MS. ARGEROPLOS: May I approach, Your Honor?

10 THE COURT: Of course.

11 MS. ARGEROPLOS: I just pulled Exhibit E and a couple
12 others from the Trustees. So we don't have binders flying
13 around all over the place.

14 BY MS. ARGEROPLOS:

15 Q So looking at Exhibit E, had you seen this deposit account
16 control agreement before August of '22?

17 A I had not. But Jordan had, I'm sure.

18 Q Okay. Would you normally keep track of deposit account
19 control agreements being on the loan side of the Bank?

20 A No. Our treasury management group actually does that for
21 us. And they monitor and flag those accounts.

22 Q And when you say flag, are you talking about a flag in the
23 Prosperity Bank's account -- deposit account system?

24 A In LegacyTexas when there was a deposit account control
25 agreement or DACA that existed, a flag was put. And again,

Bates - Direct/Argeroplos

13

1 this is not my area of expertise. But a flag is put on the
2 account so that everyone knows that that exists.

3 Q And how do you find out if that flag exists on an account?

4 A I go down the hall on my treasury management group.

5 Q And did you ask the treasury management group in October
6 of 2021 if there was a DACA in place on the 3992 account that
7 is described in this DACA agreement?

8 A Yes, I did.

9 Q Okay. Would the Bank -- so what did you conclude after
10 that conversation?

11 A That there were -- there's documentation that there was
12 not a DACA account on 3992 to a money market account.

13 Q So there was no flag?

14 A No flag.

15 Q And so did you think in October of 2021 that the DACA had
16 been released?

17 A Yes. That's what I was told.

18 Q Does Prosperity have a document where the Bondholders
19 released the DACA on the 3992 account?

20 A We have not been able to locate that document.

21 Q Would the Bank have taken that pledge of the 3992 account
22 in October 2021 if it thought a DACA existed at that time?

23 A No. Never.

24 Q Nobody wants a second lien, right?

25 A Right. It's prohibited.

Bates - Direct/Argeroplos

14

1 Q Okay. So when do you think the DACA flag fell off of the
2 3992 account? Was that before or after the merger from
3 LegacyTexas into Prosperity?

4 A It was before.

5 Q And that merger you said was in November of 2019?

6 A Correct.

7 Q So just to back up for a second for some context, what is
8 your -- what was the context for Genesis -- for Prosperity
9 making the Genesis loan, the revolving line of credit. I'm
10 sorry, the term loan?

11 A So we're going back to the original one.

12 Q The origination.

13 A The two loans were made.

14 Q Yes.

15 A A loan was made to Genesis Network Telecoms and Genesis
16 Network Mobile Services to joint borrowers of \$3 million in a
17 revolver. And then a 1.9, roughly million dollar term loan.
18 That term loan was James Goodman assumed a debt of his brother,
19 John Goodman, that we had at LegacyTexas.

20 Q And so when the Bank took the pledge in October of 2021 of
21 the 3992 account, what precipitated that pledge or caused
22 Prosperity to take it?

23 A We had two coborrowers on the loan. And reason we had
24 that was because one had strong cash flow, it was a Genesis
25 entity, and one had strong receivables. One of those entities

Bates - Direct/Argeroplos 15

1 was being sold, and we were going to have to take them off as a
2 coborrower. And so in restructuring the loan to release that,
3 I said we needed, you know, to be paid off, or we needed liquid
4 collateral and just -- it's the way we went forward.

5 Q Okay. Did you understand there to be any consideration
6 flowing between the Genesis borrowers and Goodman Networks or
7 -- and Goodman Networks with respect to that pledge of the 3992
8 account?

9 A Yes. We, James and I, discussed that. James Goodman and
10 I discussed it on several occasions. And he told me that he
11 was going to give Goodman Networks -- that James' holding
12 company had been acquiring debt and equity common and preferred
13 I think, in Goodman Networks for quite a while and became the
14 largest shareholder, I believe. And he said he was going to
15 give them debt and equity as consideration for that
16 transaction.

17 Q Did you ever see a document memorializing that
18 arrangement?

19 A I did not. Our loan documents do say that that happened.

20 Q So would you turn to Tab 9 in the Prosperity binder.
21 Is this the pledge of the 3992 account?

22 A Yes, it is.

23 Q Okay.

24 A Yes.

25 Q And I know it's small, but under collateral description

Bates - Direct/Argeroplos

16

1 about three inches down, where it says Checking Account Number
2 70173992 with lender with a hold amount of 4.6 million. What
3 does that hold amount of 4.6 million mean? Is that a minimum
4 balance requirement?

5 A That just means that internally a hold -- well, it means
6 that amount in that account is held. Internally a restriction
7 of that amount is placed on the account.

8 Q So can the balance of that account go below 4.6 million?

9 A It can't.

10 Q And was the balance of that account 4.6 million before
11 this -- before this refinance happened in October of 2021?

12 A I believe it was higher than that.

13 Q Will you turn to Tab 22? So you've got on the first email
14 in this thread it looks like you're telling James that, "We're
15 adjusting the pledge to the other account. See below. This
16 will make the balance in the account sufficient to support the
17 entire loan." So are you sure that the balance was 4.6 million
18 before this restructure -- before this pledge occurred?

19 A No, I'm not.

20 Q Okay. So what's this -- what's described in this bullet
21 point here?

22 A I believe we were moving money from another account that's
23 not pledged to the 3992 accounts sufficient enough to support
24 the pledge agreement.

25 Q Okay. And so James Goodman approved that just on October

Bates - Direct/Argeroplos

17

1 28th, 2021. Is that what that says?

2 A Yes.

3 Q Okay. Fast forward to 2022. Were you attempting in 2022
4 to restructure the Genesis loans with James?

5 A Yes. We were in frequent discussions about restructuring
6 the debt to not include -- to a different Genesis entity or a
7 Goodman related entity that did not include the pledge of a
8 deposit account.

9 Q And when you say Goodman related entity, do you mean James
10 Goodman?

11 A Yes.

12 Q And was that the Endeavor entity?

13 A That's correct.

14 Q About when did those discussions begin?

15 A Summer of 2022.

16 Q And you were dealing with James Goodman on behalf of
17 Genesis borrowers and Endeavor. Did you also understand that
18 he had decision-making authority for Goodman Networks at that
19 time?

20 A Yes, I did.

21 Q Was he a signer on the 3992 account at that time?

22 A Yes.

23 Q Was he a signer on the 3992 account in August of 2022?

24 A Let's see. August of 20 -- yes, he was.

25 Q If you turn to Tabs 26, please. So this is -- so we're

Bates - Direct/Argeroplos 18

1 looking at an email from Stephanie Elmore on October 5th, 2022.

2 And what is she asking of Ana McCollum in this email chain?

3 A She was asking to change the signer on the account.

4 Q So on October 5th, 2022, James Goodman was still a signer
5 on the account?

6 A Yes.

7 Q So if James Goodman wanted to initiate a transaction out
8 of that account in August of 2022, would the Bank have had to
9 follow his instructions?

10 A Yes.

11 Q On August 10th, 2022, did you receive an email from
12 Michelle Ross at Reed Smith asking about the Goodman Networks
13 deposit accounts?

14 A Yes, I did.

15 MS. ARGEROPLOS: Your Honor, may I approach?

16 THE COURT: Yes, you may. Thank you.

17 MS. ARGEROPLOS: I'm going to need a bigger podium.

18 THE COURT: Actually, there is a bigger podium that
19 is coming. I have --

20 MR. RUKAVINA: Taller too, I hope.

21 THE COURT: I don't know about taller. It's going to
22 be similar to that which is in Judge Everett and Judge
23 Jernigan's chambers. I mean, courtrooms not chambers.

24 MS. ARGEROPLOS: So this is Bondholders' Exhibit 48
25 which is Docket Number 397-48 for the record.

Bates - Direct/Argeroplos

19

1 BY MS. ARGEROPLOS:

2 Q Mr. Bates, had you seen this -- or actually, had you ever
3 heard from Michelle Ross prior to August 10th, 2022?

4 A No, I had not.

5 Q And like you said earlier, you didn't think that there was
6 a DACA in place on the 3992 account when you got this email on
7 August 10th?

8 A Correct.

9 MR. HILLYER: Can you tell us which -- whose exhibit
10 we're looking at?

11 MS. ARGEROPLOS: Bondholders 48.

12 MR. HILLYER: Bondholders 48. Thank you.

13 BY MS. ARGEROPLOS:

14 Q Did you suspect that the Bondholders were going to try to
15 exercise their rights with respect to the DACA accounts at
16 Prosperity Bank when their counsel reached out on August 10th?

17 A Yes.

18 Q Okay.

19 A We had done this before with them. Not with her, but with
20 the prior counsel.

21 Q Okay. So you didn't recognize Michelle Ross, but you
22 recognized the fact that --

23 A Correct.

24 Q -- secured parties can send a notice of control?

25 A That's correct.

Bates - Direct/Argeroplos

20

1 Q Okay. Did you still think that the Bank had a first lien
2 in the 3992 account at this time?

3 A Yes, I did.

4 Q And did that change over the course of the next few days?

5 A There started to be some doubt in the situation.

6 Q Doubt in the Bank's lien position?

7 A The release.

8 Q And whether the release existed?

9 A Where it was.

10 Q And were you still in discussions with James Goodman about
11 restructuring the Genesis loans at that time?

12 A Yes, I was.

13 Q How was that going?

14 A We were -- we needed to get to -- he needed us to get to a
15 place, but we were a little stalled. And I couldn't get him to
16 engage.

17 Q Would it be fair to say that he was giving you the
18 runaround around this time about restructuring the loans?

19 A Yeah. Just not engaging.

20 Q Okay. So then the pay down of the Genesis loans occurred
21 on August 15th, 2022. Is that right?

22 A Yes. That's correct.

23 Q So what was the decision making process for that?

24 A As you see here on -- I guess, on August 15th, correct?

25 Q Right.

Bates - Direct/Argeroplos

21

1 A We were getting dialogue from -- we were getting dialogue
2 from Michelle Ross's firm. My mind started running about a
3 million miles an hour. A lot of things going through my mind.
4 And quite frankly, looked at the situation and just said, you
5 know, it's something wrong here. And so --

6 Q So how did you feel about the Bank's collateral position?

7 A There was some uncertainty.

8 Q Were you worried that the Bank's interest in the 3992
9 account wasn't worth what you thought it was back in October of
10 2021?

11 A I was concerned that the release document was at a
12 predecessor company. And that I didn't know how we would find
13 it.

14 Q Did you discuss the pay down of the Genesis loans with
15 James Goodman?

16 A Yes, I did.

17 Q How?

18 A I called James and I said, James, I said, under the terms
19 of the loan agreement we are deeming ourselves insecure. And
20 we need to repay the loan today.

21 Q And what was his reaction?

22 A He did not react.

23 Q Did he say anything?

24 A He did not.

25 Q Is that a normal thing that he would do?

Bates - Direct/Argeroplos

22

1 A Yes. He can be a little cryptic at times.

2 Q Was there any indication that he opposed the pay down of
3 the Genesis loans?

4 A There was none.

5 Q Or that he disagreed with your statements about the Bank's
6 collateral position?

7 A He did not.

8 Q And at this time, you still -- the Bank still understood
9 that he had signing authority for the 3992 account?

10 A Correct.

11 Q And then so the Bank paid down the loans on the 15th. And
12 then received the notice of control the next day on August
13 16th, 2022, right?

14 A That's correct.

15 Q And then after that, you handed the matter off to your
16 treasury department?

17 A No.

18 Q The legal department?

19 A Yeah. Legal.

20 Q Okay.

21 A Right.

22 MS. ARGEROPLOS: Okay. No further questions.

23 MR. CLARKE: For the record, Brian Clarke, Hunton
24 Andrews Kurth for the Secured Bondholder Group and UMB Bank as
25 Indenture Trustee.

Bates - Cross/Clarke

23

1 Your Honor, does Mr. Guffy need permission to share
2 his screen? I thought it might be easier if we do the exhibits
3 on the screen rather than ask Mr. Bates to flip back and forth.

4 THE COURT: No. I think that's fine.

5 MR. CLARKE: Okay.

6 THE COURT: But obviously, if there comes a time
7 where he needs to see the entirety of a document, if it's
8 easier we can go to the binders, but I don't have any problem
9 with sharing.

10 MR. CLARKE: Okay. All right. Philip, why don't we
11 start with our Exhibit 45?

12 CROSS-EXAMINATION

13 BY MR. CLARKE:

14 Q Good morning, Mr. Bates. My name is Brian Clarke. I'm
15 counsel for the Secured Bondholder Group and Indenture Trustee
16 in this case.

17 Your counsel asked you a couple questions earlier about
18 this document. This is titled "Deposit Account Control
19 Agreement Account Number 3992" And so it sounds like you're
20 familiar with this document?

21 A Yes, sir.

22 Q You mentioned one of your colleagues signed it. Who was
23 that?

24 A I believe Jordan Yenne signed it.

25 Q And who is he?

Bates - Cross/Clarke

24

1 A He's a senior vice president in my group. He's been with
2 me for 16 years. He is no longer with me.

3 Q Okay. And in relation to you within your firm, is he --
4 does he work for you? Do you work for him? Are you
5 colleagues?

6 A He works for me. He's two doors down from me.

7 Q Okay. I got it. Thank you.

8 MR. CLARKE: And just -- Mr. Guffy, I guess just for
9 the record, maybe we can just pull up the signature pages. I
10 do think Mr. Bates is correct. That Mr. Yenne is the signatory
11 on these. Okay, that's right. So LegacyTexas Bank. Jordan
12 Yenne is the signatory. Why don't we go up a couple pages to
13 the notice parties.

14 BY MR. CLARKE:

15 Q Okay. So this says, this is the notice section of the
16 agreement. I'm sure you've seen these before. And so this
17 designates you, treasury management, Mr. Yenne, and general
18 counsel as the collective notice parties on this DACA. Is that
19 right?

20 A That's correct.

21 Q Okay.

22 MR. CLARKE: And Mr. Guffy, just why don't we just do
23 this quickly. We discussed yesterday the control agreements
24 for Account Numbers 1861 and 1838.

25 If these are in evidence already, Your Honor, I was

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25

1 just going to establish the same thing. If you want we can
2 pull them up. I don't know if the parties object to --

3 THE COURT: I probably won't allow the witness to
4 look at them.

5 MR. CLARKE: Okay. Yeah. So why don't we start with
6 Exhibit 10. So let's go to the notice section. Okay. So same
7 parties. And let's see. I think Mr. Yenne signed this one
8 also. Okay. And then just real quick, let's do Exhibit 13.
9 Okay. Let's go to the signature page. Okay. Thank you.

10 BY MR. CLARKE:

11 Q So it sounds like for these agreements and I think for all
12 the others, you're the notice party along with a bunch of your
13 colleagues and Mr. Yenne signed these DACAs.

14 A Correct.

15 Q Okay. Counsel asked you some questions about our Exhibit
16 Number 48.

17 MR. CLARKE: You want to bring that one up. Okay.
18 Why don't we scroll down to the beginning of the chain.

19 BY MR. CLARKE:

20 Q This starts with an email from Michelle Ross at the Reed
21 Smith firm. And it looks like she's looking for contact
22 information to I guess update any address changes that would
23 have occurred when LegacyTexas merged with Prosperity. Is that
24 fair?

25 A That's correct.

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1 Q Okay. Do you think this email chain is an accurate copy
2 of the exchange you had with Ms. Ross on August 10th and 11th?

3 A Yes, it is.

4 Q It hasn't been altered or anything like that?

5 A No.

6 Q No. And you understood from this email, I think your
7 testimony before was you done this exercise. I don't recall if
8 it was with the Bondholders on this deal or other deals. Maybe
9 it's both.

10 A It was this deal.

11 Q Okay. It's this deal. But so you knew what Ms. Ross was
12 asking about on at least the 10th or the 11th regardless of
13 whether anything was flagged internally. Is it fair to say
14 Prosperity at that point, had a copy of account control
15 agreement for 3992?

16 A We had been provided one, I believe the day before.

17 MR. CLARKE: Okay. Your Honor, I move to admit
18 Exhibit 48.

19 THE COURT: Is there any objection to the admission
20 of Exhibit 48? Exhibit 48 is hereby admitted.

21 (Bondholders Exhibit 48 admitted into evidence)

22 MR. CLARKE: Mr. Guffy, let's pull up 49.

23 Let's scroll to the bottom and get the full chain.

24 BY MR. CLARKE:

25 Q This is an email from John Goodman copying you and cc'ing

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1 James. Who is John Goodman?

2 A John Goodman is James's younger brother. He was president
3 of Goodman Networks for a very long time. And was, quite
4 frankly, the person that raised the capital through the
5 Bondholders. And we'd had a long history with John. And he
6 had been banking with the company probably going back 14 years.

7 Q Okay. And the question here is, "What do you need from me
8 to take over the loan with you?" What is the loan? What is he
9 talking about?

10 A He's talking about the term loan that I referred to
11 earlier that --

12 Q The Genesis term loan.

13 A The Genesis term loan his brother assumed and the loan was
14 struggling.

15 Q Okay. And I think these are in Prosperity's exhibit
16 binders. But just for the record, is it your understanding
17 that James Goodman had personal liability, or a guarantee on
18 that loan?

19 A He did.

20 Q He did. Okay.

21 MR. CLARKE: So let's scroll up. And so it sounds
22 like -- it looks like your --

23 THE COURT: For my benefit -- excuse me, Mr. Clarke.
24 For my benefit, the loan on which Mr. James Goodman had
25 personal liability was the Genesis loan?

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1 THE WITNESS: Yes, he did. There were two notes, and
2 he guaranteed both of them.

3 THE COURT: Okay. Thank you very much. Appreciate
4 it.

5 BY MR. CLARKE:

6 Q Okay. It sounds like -- so this reads like a reply from
7 you to John copying James proposing one option to, I guess, pay
8 off that loan, right?

9 A Correct.

10 Q Okay. He responds, he says "We're not allowed to do
11 that." He references MSLP. This is back in '21 and '22. So
12 that was a Main Street Lending Program loan. Do you remember
13 those?

14 A One thing I didn't say there, is John Goodman has formed
15 another company in Fredericksburg I guess it is, and that's
16 where this dialogue is going.

17 Q I got you. Okay. But is that what he means by MSLP?
18 We're not allowed to add additional debt to that facility?

19 A That's correct.

20 Q Okay.

21 A Used the facility in that manner.

22 Q Yes, I got it. Okay.

23 MR. CLARKE: So let's just go scroll up. We're
24 almost at the top. You can keep going.

25 BY MR. CLARKE:

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1 Q Okay. And so this is just a further exchange of looks
2 like some diligence information about John and his financials
3 that you were looking at to take out the Genesis term loan. Is
4 that right?

5 A Correct.

6 Q Okay.

7 A James --

8 Q And so we took a look at this exchange. Is this an
9 accurate copy of that email exchange? Hasn't been altered or
10 anything like that?

11 A It doesn't appear to be.

12 Q Okay. And it doesn't leave anything out that you think
13 for the record needs to be in?

14 A No, it was just working the situation.

15 MR. CLARKE: Okay. Your Honor, I'd move to admit
16 Exhibit 49.

17 THE COURT: Any objection to the admission of 49?
18 Bondholders' 49 is hereby admitted.

19 (Bondholders' Exhibit 49 admitted into evidence)

20 MR. CLARKE: Okay. Let's go to Exhibit 50. Okay.
21 Let's start at the bottom.

22 BY MR. CLARKE:

23 Q This is an email on August 12th from James to you asking
24 for a six-month loan for five million. And then he says, "We
25 could service the existing" -- I assume LLC -- "as a letter of

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1 credit and release the Goodman money." Do you see that?

2 A Yes, sir.

3 MR. CLARKE: Okay. Philip, let's scroll up.

4 MR. LANGLEY: Just an objection on that. Is it
5 letter of credit or line of credit? I think there might be a
6 material difference there.

7 THE WITNESS: It's a line of credit.

8 MR. CLARKE: Line of credit?

9 THE WITNESS: Yes, sir.

10 BY MR. CLARKE:

11 Q You respond pretty quickly. It says, "Not under the
12 extremely tight time line we have. Another option, we could
13 open a new account for Goodman Networks, and move the pledge
14 money over to that account and you sign new pledge documents.
15 Not my favorite option, but would clear things up. I will call
16 you in a bit on your thoughts below."

17 Do you remember sending that?

18 A Yes.

19 MR. CLARKE: Okay. Philip, this one's
20 (indiscernible). Can we scroll up to the top?

21 BY MR. CLARKE:

22 Q Okay. So this is a reply from James, again, a couple of
23 minutes later. "Bater, if I'm not mistaken, the Bondholders or
24 the Trustee has not right." I see that means no right. Is
25 that how you interpret that?

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1 A Yes.

2 Q "Or authority unless Goodman is in default or in
3 bankruptcy. So all communications has to go through Goodman if
4 the Trustee has any questions. Jonathan can manage and handle
5 it for Goodman." Then you reply, "Give me a call."

6 Do you remember that exchange?

7 A Yes.

8 Q And is this email thread here accurate?

9 A Yes. Given the situation. I mean, what I would say is
10 that we were already talking about a loan to Endeavor.

11 Q Okay.

12 A This was not the first time this was surfaced.

13 Q Okay. And I see copied on here of James's last response
14 at the top Tobygalloway@winstead.com. Who is Toby Galloway?

15 A I don't know.

16 Q Okay. Was he Prosperity counsel?

17 A No.

18 Q Okay. So if anyone, maybe he was James's counsel. But
19 you don't know.

20 A Yeah. I don't know.

21 Q Okay. That's fine.

22 A That's the first I ever seen that.

23 Q All right. And so has this exchange been altered?

24 A Doesn't appear to be.

25 MR. CLARKE: Okay. Your Honor, I move to admit

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1 Exhibit 50.

2 THE COURT: Is there any objection to the admission
3 of Exhibit 50? Exhibit 50 is hereby admitted.

4 (Bondholders Exhibit 50 admitted into evidence)

5 BY MR. CLARKE:

6 Q And just a follow-up question before we move off Exhibit
7 50. The reference here to -- in this exchange to release the
8 Goodman money, that refers to the 3992 account funds, correct?

9 A That's correct.

10 MR. CLARKE: All right. Philip, let's bring up
11 Exhibit 51.

12 BY MR. CLARKE:

13 Q Okay. This is an email from Ana McCollum at Prosperity.
14 Who was Ana McCollum?

15 A She's a senior person in our treasury management group.
16 She's been with us going back to LegacyTexas.

17 Q Thank you. And I apologize if that was asked before, but
18 I just wanted to make sure that was in there. This is shortly
19 after the email exchange that we just went over also on Friday,
20 August 12th. Do you agree with that?

21 A I was really included for informational purposes only
22 here.

23 Q That's fine. And I'm just looking at the time stamp. And
24 so --

25 A Right.

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1 Q -- we were looking at Exhibit 50. That was also Friday,
2 August 12th. Looked to be about an hour and a half before this
3 email from Ana. Does that ring a bell?

4 A Yes.

5 Q And she's saying, "I understand you would like to open a
6 new account as soon as possible." And look at the subject
7 line. It says, new account request for Goodman Networks. Is
8 she referring to a new account to move the 4.6 million into the
9 3992 account?

10 A I don't know that for sure.

11 Q Okay. Based on the email exchange we just read, do you
12 think that's what she's referring to?

13 MR. LANGLEY: Objection, Your Honor. The witness has
14 testified he doesn't have knowledge about this. And he's only
15 --

16 MR. CLARKE: I just asked him what he thinks based on
17 the prior email.

18 MR. LANGLEY: -- information. We think it's hearsay.

19 THE COURT: Okay. I'm going to overrule the
20 objection and allow him to explore it. You may have an
21 objection to a next question down the line.

22 MR. CLARKE: Okay.

23 BY MR. CLARKE:

24 Q Based on Exhibit 50, your testimony regarding Exhibit 50.
25 That the suggestion to move the funds to a new account, that

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1 referred to the Goodman 3992 account to move it to some new
2 account within Prosperity. That was your testimony, correct?

3 A Yes.

4 Q And so Ms. McCollum's email, "I understand you would like
5 to open a new account as soon as possible." And the subject
6 line here is "New Account Request For Goodman Networks."

7 And so do you think she is referring to moving the 3992
8 account proceeds to a new Prosperity account?

9 A She could be, but I'm not sure (indiscernible).

10 Q Could be. Okay.

11 A This is on the 12th. Yeah.

12 MR. CLARKE: All right. Philip, why don't you scroll
13 up?

14 BY MR. CLARKE:

15 Q And then James says, "Thanks, Ana. Let me get Jonathan
16 working on this since he is the Goodman representative." And
17 you're copied on this email?

18 A Yes.

19 Q And so is Alice Lee. Who is Alice Lee? She's on both
20 Ana's message and on James's reply.

21 A She is a junior person that works for Ana McCollum in the
22 treasury management group.

23 Q Okay. And so you're copied on this email exchange? Do
24 you remember this email exchange?

25 A Yes, I do.

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1 Q Is it accurate?

2 A Yes.

3 Q Does it leave anything out?

4 A No, not really.

5 MR. CLARKE: Okay. Your Honor, I move to admit
6 Exhibit 51.

7 THE COURT: Is there any objection to the admission
8 of Exhibit 51? Hearing no objections, Bondholders' 51 is
9 hereby admitted.

10 (Bondholders' Exhibit 51 admitted into evidence)

11 MR. CLARKE: All right. Philip, let's pull up
12 Exhibit 52. And just check my chart. I think 52 is already in
13 evidence, but I just want to ask a couple questions on it.
14 This is an email from Kathleen LaManna of Shipman & Goodwin.
15 It says at the bottom counsel for US Bank National Association
16 as collateral agent.

17 Just referring back to Exhibit 45. So just real
18 quickly, we can just quickly switch back to that. Sorry about
19 that. Let's just go to the first page. So that's US Bank
20 National Association as collateral agent.

21 BY MR. CLARKE:

22 Q So Ms. LaManna here is sending you an email with a notice
23 attached as counsel for US Bank National Association as
24 collateral agent on this control agreement. Do you agree with
25 that?

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1 A Yes.

2 MR. CLARKE: Okay. Okay. So Philip, let's go back
3 to 50 -- I'm sorry. 52.

4 BY MR. CLARKE:

5 Q It says, "Please see attached notice of exclusive control
6 from US Bank National Association as collateral agent relating
7 to the above account." And the above account in the subject
8 line is Account 3992. Do you see that?

9 A Yes.

10 Q And then our Exhibit 53 which is also already in evidence,
11 is this attachment that's attached here, the 3992 notice of
12 exclusive control. Do you remember receiving this in the email
13 from Ms. LaManna?

14 A Yes, I do.

15 MR. CLARKE: Okay. All right. So let's pull up
16 Exhibit 55.

17 BY MR. CLARKE:

18 Q This is an email from Stephanie Elmore to you on August
19 18th. Who is Stephanie Elmore?

20 A Stephanie is the person we've worked with for years given
21 that work. She was a senior controller at the company and we
22 had our treasury management group specifically had daily
23 dialogue with her.

24 Q Okay. Daily dialogue with her?

25 A She was in more of a consulting role at this time. Not

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1 working at the company, but still with them.

2 Q Okay. And she's asking, "Can you tell me why our accounts
3 are showing zero available balances for all accounts?"

4 A Correct.

5 Q And so you reply, "Can you call me?" Are they showing
6 zero available balances because the notices of exclusive
7 control were sent for all the accounts subject to control
8 agreements?

9 A Yes.

10 MR. CLARKE: Okay. Your Honor.

11 BY MR. CLARKE:

12 Q Is this an accurate copy of the email exchange you had
13 with Ms. Elmore?

14 A Yes.

15 Q Has it been altered?

16 A No.

17 MR. CLARKE: Okay. Your Honor, I moved to admit 55
18 -- I think we're on 55. 55.

19 THE COURT: Any objection to the admission of Exhibit
20 55? Hearing no objection, Exhibit 55 on behalf of the
21 Bondholders is admitted.

22 (Bondholders Exhibit 55 admitted into evidence)

23 MR. CLARKE: Just a few more. Thank you for being
24 patient. Let's go to Exhibit 50 -- excuse me. 64.

25 BY MR. CLARKE:

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1 Q So this is again Stephanie Elmore to you. Ana McCollum is
2 copied. Was it your understanding she's inquiring here on why
3 loan payments are being debited from Goodman Networks accounts?

4 A Yes.

5 Q Okay. She says, "I thought it was paid off." What is she
6 referring to?

7 A She's talking about the payment on the term loan.

8 Q The Genesis term loan?

9 A The Genesis term loan.

10 MR. CLARKE: Okay. Let's just scroll up, Philip.

11 BY MR. CLARKE:

12 Q Okay. And this is your response to Ms. Elmore. And so
13 you told her you pulled -- it says, "We pulled the auto debit."

14 A Correct.

15 Q "We advanced back up on the loan and put the money into an
16 escrow account as a show of good faith." What is the money?
17 Is that the 3992 account funds?

18 A Yes.

19 Q Is this a -- and this is an accurate copy of this
20 exchange? Do you recall this exchange?

21 A Yes.

22 Q Has it been altered or anything like that?

23 A Doesn't appear to be.

24 MR. CLARKE: Your Honor, I move to admit 64.

25 THE COURT: Any objection to the admission of Exhibit

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1 64? Hearing no objection, 64 is hereby admitted.

2 (Bondholders Exhibit 64 admitted into evidence)

3 MR. CLARKE: I think we have just one more. Philip,
4 why don't we go to Exhibit 65.

5 BY MR. CLARKE:

6 Q This is an email looks like October 19th, to Zachary --
7 how do you pronounce that last name?

8 A Zach Wiebe.

9 Q Okay. And who is he?

10 A I guess it's Wiebe? I thought there was an L.

11 Q Yeah.

12 A He came in as the Chief Financial Officer for Genesis
13 Networks Group.

14 Q Okay.

15 A Cathy Kincy was in that role for years and Zach had been
16 there for nine months.

17 Q Okay. So there's no subject line here. And it looks like
18 this is -- did you send this to him after a phone call or
19 something like that?

20 A Yes.

21 Q Okay. And you said to Mr. Wiebe -- I hope I'm pronouncing
22 it right. Apologize to it if I'm not. "Just to clarify if
23 James and I would not have agreed to move on the debt repayment
24 on that Monday." I assume this is the money collateral would
25 have been pulled from the account by the Bondholders following

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1 the notice of control on that Tuesday."

2 Did you send Mr. Wiebe this message?

3 A Yes, apparently.

4 Q And has this been altered?

5 A No.

6 MR. CLARKE: Your Honor, move to admit 65.

7 THE COURT: Any objection to the admission of Exhibit
8 65? It's hereby admitted.

9 (Bondholders Exhibit 65 admitted into evidence)

10 MR. CLARKE: Thank you. I have no further questions,
11 just based on the ordering we had. Hold on one second. Maybe
12 I'm being corrected. Okay. Just one more. And this will be
13 -- I promise this will be quick.

14 Can we just pull back up Exhibit 45? This is the
15 control agreement we discussed at the beginning of our
16 conversation. Can we take a quick look at Section 2? Philip,
17 I think it's the top of Page 2.

18 BY MR. CLARKE:

19 Q All right. So this is the granting clause, Section 2 of
20 the control agreement. I want to focus on the second sentence.

21 It says, "Company represents and warrants that there are
22 no other effective liens or encumbrances with respect to the
23 deposit account and covenants with secured parties that it
24 shall not enter into any acknowledgment or agreement that gives
25 any other person or entity except the secured party control

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1 over or any other security interest lien or title in the
2 deposit account."

3 Do you see that?

4 A Yes.

5 Q And so do you think the company breached this provision?

6 MS. ARGEROPLOS: Objection. Calls for a legal
7 conclusion.

8 MR. CLARKE: And I know you're not -- I know you're
9 not a lawyer. But I -- you know, you testified before you're a
10 bank officer.

11 BY MR. CLARKE:

12 Q Are you generally familiar with deposit account control
13 agreements and how they work?

14 A Yes.

15 THE COURT: Before you answer, there's an objection,
16 Mr. Clarke.

17 MS. ARGEROPLOS: Calls for a legal conclusion.

18 THE COURT: Okay.

19 MR. CLARKE: I can ask him questions to establish
20 foundation. I'm asking for his professional opinion as a bank
21 officer. You know, we can see if he's familiar with how
22 covenants work, particularly in control agreements, and he can
23 give a nonlegal answer. I'm not asking for a legal opinion on
24 whether he thinks this provision was violated.

25 MS. ARGEROPLOS: How does he have a legal or a

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1 professional opinion about whether something's a breach?

2 MR. CLARKE: Because he's very familiar with -- well,
3 we'll see if he's very familiar with these agreements.

4 THE COURT: I'm going to sustain the objection as to
5 it being a legal conclusion, but I will allow him to give his
6 lay testimony.

7 MS. ARGEROPLOS: Thank you, Your Honor.

8 THE COURT: Mr. Clarke.

9 MR. CLARKE: Thank you.

10 BY MR. CLARKE:

11 Q You testified before about the pledge in favor of
12 Prosperity with respect to the 3992 account? Do you think the
13 grant of that pledge -- if we don't want to use the word
14 breached, we could say implicates this last sentence of Section
15 2?

16 A I guess I would have to -- in the company here, are we
17 talking about Goodman Networks?

18 Q Yes. The company is Goodman Networks.

19 A Okay. You're talking about the last sentence? At the
20 time there was not.

21 Q It says -- so at the top, so that's a rep and warranty at
22 the beginning. And then the second half here is a covenant.

23 It says, "Covenants with the secured parties that it shall
24 not enter into any acknowledgment or agreement that gives any
25 other person or entity except a secured party control over any

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1 other security interest lien or title in the deposit account."

2 So let me rephrase my question. I'm really focused on the
3 second half of this sentence.

4 A Okay.

5 Q Did the grant of a pledge in Account 3992 to Prosperity
6 implicate this covenant?

7 A Just in that respect, I guess it would, but it had been
8 released.

9 Q What had been released?

10 A This DACA was released.

11 Q When?

12 A I don't know the exact time frame. Prior to November of
13 2019.

14 Q Who released it?

15 A Our treasury management group.

16 Q On what authority?

17 A They got documentation from some legal group.

18 Q Does that documentation exist?

19 A We have not been able to find it because our company
20 merged and there was a lot of information that was lost.

21 Q Okay. So your testimony is that someone -- we don't know
22 who -- released this control agreement. But we have no
23 document or other evidence with respect to that release.

24 A That's true.

25 MR. CLARKE: Okay. Can we scroll down to Section 5?

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1 THE WITNESS: Okay. In this -- regarding this
2 document, can I -- Mr. Clarke, can I clarify one thing? It
3 says on there I'm treasury management services. I'm not.
4 That's not my title, and it says that on there. So I just
5 wanted to make sure that I could explain that. Down there
6 under notifiers.

7 MR. CLARKE: Okay.

8 BY MR. CLARKE:

9 Q Section 5. This is titled "Subordination By Depository
10 Bank." The first sentence says,

11 "Company and depository bank acknowledge notice of and
12 recognize secured parties continuing security interest in the
13 deposit account and in all items deposited in the deposit
14 account and in the proceeds thereof."

15 Do you see that sentence?

16 A Yes.

17 Q The second sentence says, "Depository bank hereby
18 subordinates any statutory or contractual right or claim of
19 offset or lien resulting from any transaction which involves
20 the deposit account."

21 Do you see that sentence?

22 A Yes.

23 MR. CLARKE: Your Honor, I have no further questions.
24 So this was -- you remember the arrangement yesterday. I get
25 -- he was on our witness list and so this is I guess, direct.

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1 You know, so I guess I reserve the right to cross based on if
2 the Objecting Creditors have him as a witness for their
3 case-in-chief. Thank you.

4 THE COURT: Thank you very much.

5 CROSS-EXAMINATION

6 BY MR. RUKAVINA:

7 Q Mr. Bates, I represent the Bankruptcy Trustee. I just
8 have a couple of questions for you. The funds in the 3992
9 account, they were swept on August the 15th, correct?

10 A Correct.

11 Q And temporarily applied to the Genesis debt, correct?

12 A Correct.

13 Q And then that was reversed, correct?

14 A Yes.

15 Q And then the funds were put into the new account that
16 we're here about today.

17 A Correct.

18 Q Did those funds ever leave Prosperity Bank?

19 A No, they did not.

20 Q These are just book entries, journal entries that
21 accountants do.

22 A That's correct.

23 Q Are the Genesis entities the borrowers -- still borrowers
24 of Prosperity Bank?

25 A I actually don't know. I was removed from the

Bates - Cross/Rukavina

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1 relationship around year end of that year.

2 Q Of 2022?

3 A And Mr. Montgomery, my partner was -- he took over in that
4 role.

5 Q Well, here's my question. Do you have any knowledge of
6 whether the Genesis entities transferred their business
7 operations to one or more new entities? And was that the
8 purpose of their restructuring? Or what was the purpose of
9 their restructuring that you were talking about with Endeavor?

10 A Ours was just a restructure of the existing debt. The
11 Endeavor entity, I don't recall exactly how it worked honestly,
12 but the Endeavor entity was formed out of the remaining
13 companies.

14 Q The remaining Genesis companies?

15 A Correct.

16 Q So as of the end of last year while you were still
17 managing this relationship, were the Genesis entities in
18 existence to your knowledge?

19 A Yes.

20 Q Were they still borrowers of the Bank to your knowledge?

21 A Yes, they were.

22 Q Had they transferred their business assets to any other
23 entity to your knowledge as of that time?

24 A I don't think so as of that time.

25 Q Do you still have any kind of professional or personal or

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1 banking relationship with James Goodman?

2 A No, I don't.

3 Q Why is that?

4 A It's just the manner in which we handle situations that
5 get challenging like this, and they remove people like me from
6 the dealing with the client.

7 MR. RUKAVINA: Okay. Thank you, sir.

8 THE WITNESS: Sure.

9 THE COURT: Mr. Hillyer?

10 MR. HILLYER: Thank you, Your Honor.

11 THE COURT: Before we start a new line of questioning
12 with Mr. Hillyer, Mr. Bates, do you need a convenience break?
13 Are you ready --

14 THE WITNESS: I'm okay.

15 THE COURT: All right. Everybody still ready? All
16 right.

17 MR. RUKAVINA: Your Honor, I might go, but
18 Mr. Berghman can stay here, if that's okay.

19 THE COURT: Okay. Thank you. Just one moment. My
20 system powered down. Just one moment.

21 All right. Ready when you are, Mr. Hillyer.

22 MR. HILLYER: Okay. Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. HILLYER:

25 Q Good morning, Mr. Bates.

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1 A Good morning.

2 Q My name is Cam Hillyer. I represent FedEx. Just got a
3 couple questions for you. Starting with when you say you
4 mentioned flags, what are you talking about electronic flag? I
5 mean, you're not talking about physical flags or anything on
6 like a hard copy. This is in your internal system.

7 A That's correct.

8 Q Okay. So just in layman's terms, tell me where does a
9 flag appear on the screen? Is that when you pull up the
10 computer and there's, like, an actual red flag that shows you
11 or --

12 A It's in our operating system on the -- I think it's called
13 Precision. It's in the operating system that controls the
14 depository side of the Bank. They put a notation on there in,
15 you know, so that you will see it, that that is subject to a
16 deposit account control occurring.

17 Q Okay. When you say you, you don't mean me.

18 A The viewers.

19 Q You mean the person at the Bank.

20 A Correct.

21 Q Okay. Okay. So it's internal. So it doesn't appear on a
22 statement. Like when you get your bank statement for a deposit
23 account, it won't have a little notation on the top, flagged
24 account.

25 A I don't know that, Mr. Hillyer. I don't think so. But I

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1 don't know that.

2 Q Okay. And you said that normally a DACA -- well, when I
3 say DACA, I mean deposit account control agreement. Okay. So
4 you said normally, if your internal system had notated a DACA
5 for an account, it would appear as a flag on that account in
6 your internal system?

7 A That's correct.

8 Q Okay. And there wasn't a flag on this account?

9 A That's correct.

10 Q When I say this account, I mean the 3992 account.

11 A At the date we're talking about.

12 Q Okay. Well, that's what I was going to ask you is, at the
13 time that the Bank took an assignment of deposit account, your
14 system did not notate that flag.

15 A It did not.

16 Q Okay. You weren't aware of the DACA at that time?

17 A Absolutely not.

18 Q Okay.

19 A I couldn't go there.

20 Q So when an assignment of deposit account is done, is that
21 also a flag?

22 A The way that works is, is if I were to take a -- make you
23 a cash secured loan, there is -- yes, there is an internal flag
24 that occurs on that account and puts a hold on that account.
25 So that you can -- money can't be released above a certain

Bates - Cross/Hillyer

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1 amount to secure your loan with me.

2 Q Okay. Well, that's what I was going to ask you. Is that
3 the assignment created, I believe you testified a hold or a
4 restriction? I'm going to call it a frozen floor is what I
5 believe what lenders call it. So that would have been notated
6 on the account, correct?

7 A Absolutely.

8 Q Okay. And when you did -- I'm not going to make you go
9 back through exhibits. When I talk about the assignment of
10 deposit accounts, you understand what I'm talking about? The
11 assignment from Goodman Networks?

12 A Yes, sir.

13 Q The debtor to Prosperity. I believe you testified, but I
14 would like you to clarify. So what was the consideration that
15 the Bank gave Goodman Networks in exchange for taking that
16 assignment of deposit account?

17 A I didn't give him any consideration. That was not my
18 role.

19 Q Okay. But what -- I don't mean you -- say, did Goodman
20 Networks receive any money? Did they receive any benefit to
21 your knowledge for assigning that deposit account?

22 A Yes.

23 I had multiple conversations with James Goodman about
24 that. And we discussed that consideration. And he said that
25 -- like I stated earlier, he said that he was going to give

Bates - Cross/Hillyer

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1 them debt he had acquired and equity in the company as
2 consideration. And that he would, you know, put that in place.

3 Q Okay. So to be clear, that's what Mr. Goodman is doing.
4 I'm asking, did the Bank give any value to Prosperity? Did the
5 Bank give any value or consideration to Goodman Networks?

6 A No, it did not.

7 Q Let's talk about the phone call with James Goodman and get
8 some clarification. I believe you testified you called James
9 Goodman, told him that the Bank was insecure. I'm assuming
10 you're talking about an insecurity clause in a loan agreement.

11 A Correct.

12 Q Is that correct?

13 A Correct.

14 Q Okay. And you said that James Goodman gave you no
15 response?

16 A That's correct.

17 Q Is that correct?

18 A Yes.

19 Q Okay. And then I believe you said there was silence.

20 A Yes.

21 Q Okay. And did you tell James Goodman that you were taking
22 the money out of the 3992 account? Or when I say you, I mean
23 the Bank in this context?

24 A Yes.

25 Q Okay.

Bates - Cross/Hillyer

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1 A I told him that we considered the -- it to be a default
2 under the loan under the deemed insecure clause, and that we
3 were moving the money to repay the loan.

4 Q Okay. So not to put too fine a point on it. But did
5 James Goodman tell you to take the money out of the account, or
6 did you tell James Goodman, you being the Bank, were taking the
7 money out of the account?

8 A I told him.

9 Q Okay. And I believe Mr. Rukavina asked you earlier, you
10 understand what a sweep is?

11 A Yeah.

12 Q A sweep of a bank account.

13 A Yes.

14 Q Okay. And so when I ask you -- and I'll explain it, so in
15 a default sweep of a bank account, I believe you said that
16 that's a unilateral action by the Bank. Is that correct?

17 A Yes.

18 Q Okay. So you were going to do this whether James Goodman
19 responded? Was silent?

20 A I'm not sure if he -- you know, how I would have responded
21 if he would have said no. I mean, I don't know.

22 Q Okay. But he didn't say go ahead and do it.

23 A He did not say okay, and he did not say don't do it.

24 MR. HILLYER: Okay. Let me show you -- may I
25 approach, Your Honor?

Bates - Cross/Hillyer

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1 THE COURT: Yes, you may.

2 (Counsel confer)

3 MR. HILLYER: Your Honor, I hope y'all get some
4 colder weather because y'all are going to have one heck of a
5 bonfire. I'm giving you this copy.

6 THE WITNESS: Oh.

7 MR. HILLYER: He's trying to find the page for you.

8 THE WITNESS: No problem.

9 MR. HILLYER: It's FedEx 105.

10 THE WITNESS: Okay.

11 BY MR. HILLYER:

12 Q Mr. Bates, that's FedEx Exhibit 105. That's a reply brief
13 filed by your counsel. And I've already turned it to a certain
14 page, but you are certainly willing to flip it back and
15 familiarize yourself.

16 MR. RUKAVINA: Which page, Cam?

17 MR. HILLYER: I flipped it to 6 of 25.

18 THE WITNESS: Mr. Hillyer, so this is a response from
19 our counsel?

20 MR. HILLYER: Yes. This is Prosperity Bank's filed
21 pleading.

22 THE WITNESS: Okay. Okay.

23 BY MR. HILLYER:

24 Q Okay. And so I just want, again, some clarity on Page 6
25 of 25. Well, start on Page 5 of 25.

Bates - Cross/Hillyer

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1 A Okay.

2 Q And so where it says Prosperity acted in good -- I'm
3 sorry, all the way at the bottom, Number 12. "Prosperity acted
4 in good faith and reliance on James Goodman's authority to act
5 on behalf of the debtor, and that James Goodman was the
6 authorized signatory on the deposit accounts."

7 And then if you scroll to the very next page, or flip on
8 your page, and it basically says on -- give me one second. It
9 says, "The objectors and UMB have alleged that Prosperity
10 colluded with the debtor, but Prosperity was just following the
11 direction of the authorized signatory on the debtors accounts."

12 Do you see that statement?

13 A Where are you? I'm sorry?

14 Q I'm sorry. At the top of Page 6 of 25.

15 A Okay. Page 6, right?

16 Q Yes.

17 A Okay.

18 Q Okay. So that's -- again to be specific, James Goodman
19 did not direct you to take the money out of the 3992 account,
20 did he?

21 A No, he did not.

22 Q Okay.

23 A He did not object either.

24 Q Okay.

25 A And he would object if he didn't want me to do it.

Bates - Cross/Hillyer

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1 Q Did he tell you -- did he authorize you to take the money
2 out of the account?

3 A I guess technically, no.

4 Q Okay. Follow-up question. Did he need to authorize you
5 to take the money out of the account?

6 A No, he did not.

7 Q Okay. So I understand what you're saying. But at the
8 time that you took the money out of the account, the 3992
9 account, am I correct in saying that was done unilaterally by
10 the Bank, and it didn't matter who was the signatory on the
11 Bank. It didn't matter if James Goodman was a signatory, if I
12 was a signatory, or anyone was a signatory. You didn't have
13 anyone authorize it? You swept it?

14 A We swept it. Yes.

15 Q Okay.

16 A I was not acting alone.

17 Q You were not acting alone.

18 A Well, I mean, I met with my credit people.

19 Q Oh, okay.

20 A Yeah.

21 Q When you say acting alone, you mean acting alone in --
22 within the Bank?

23 A Right.

24 Q Okay.

25 A Right.

Bates - Cross/Hillyer

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1 Q Okay. Mr. Bates, you were asked about several emails.

2 And I'm not going to ask you to flip them up. You remember the

3 Bondholders counsel, Mr. Clarke, showing you emails about

4 setting up a new account and moving money from the 3992

5 account?

6 A Yes.

7 Q You remember that?

8 A Uh-huh.

9 Q Did that ever happen?

10 A No, it did not.

11 Q Okay. You were asked and shown an exhibit of the notice

12 of exclusive control on August 16th. Do you remember seeing

13 that?

14 A Yes.

15 Q Okay. Was it your understanding that until the Bank

16 received the notice of exclusive control that the Bank had the

17 right to take the money out of the account?

18 A Yes, we did.

19 Q Okay. You were shown Exhibit Bondholders 64 and -- hang

20 on. It's not going to be in that one. That's the wrong

21 binder.

22 A Yeah. I was trying to fix this for you.

23 Q That's Bondholder Exhibit 64, Mr. Bates. Mr. Clarke was

24 asking you about that. You remember that exhibit?

25 A Yes, sir.

Bates - Cross/Hillyer

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1 Q Okay. I just want clarification on when you said you
2 wrote this email to Ms. Elmore, correct?

3 A Correct.

4 Q Okay. And you said we -- I believe you were asked you put
5 the money into an escrow account as a show of good faith.

6 Okay. When you say the escrow account, you're talking about
7 the deposit Account 0188, not the deposit Account 3992. Is
8 that correct?

9 A Correct. I did not do that, but that's what occurred.

10 Q Okay. But you're --

11 A Yes.

12 Q You're aware that there's a separate deposit account?

13 A Yes.

14 Q With a separate -- okay.

15 A Yes.

16 Q Okay. And the 0188 is the account that you're referencing
17 in your email?

18 A Correct.

19 Q Okay. So in broad terms, do you understand exactly what
20 happened when the money was taken out of the 3992 account when
21 the Bank swept it?

22 A Yes.

23 Q Okay.

24 A I mean, not technically, you know, but yes, I understand
25 the --

Bates - Cross/Hillyer

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1 Q Okay.

2 A -- concept of what was going on, I guess is what I mean.

3 Q Okay. Well, then, I'm not asking you for hyper technical
4 answers. So when the money is swept out of the 3992 account --

5 A Correct.

6 Q -- okay, it goes where?

7 A Our treasury -- excuse me. Our loan servicing group would
8 take the money out of the depository account and apply it to
9 the loan principal and interest.

10 Q Okay.

11 A And those entries were just being made and, you know,
12 would reflect immediately.

13 A Okay.

14 Q So the loan would go to zero.

15 A Correct.

16 Q And the deposit account would be deducted.

17 A Correct.

18 Q Okay. So is that money -- that money is not sitting in
19 any account at that point?

20 A No, it's not.

21 Q That money has been zeroed out.

22 A Yes.

23 Q Is that what -- okay.

24 A Yes, it has.

25 Q Okay. And then you say escrow account. I'm going to call

Bates - Cross/Hillyer

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1 it Account 0188 to be specific. Okay. Then that account about
2 two weeks later. Is that correct?

3 A Correct.

4 Q That account goes -- is created and goes from zero to four
5 point, whatever. \$4.4 million?

6 A Correct.

7 Q Okay. Where does that money come from?

8 A That money came from readvancing on the loan to Genesis
9 and reversing the transaction that -- the pay down that
10 occurred.

11 Q Okay.

12 A And --

13 Q So --

14 A Go ahead. Sorry.

15 Q I mean to even interrupt you.

16 A No.

17 Q Okay. So for that two weeks, the Genesis loan is zero.

18 A Correct.

19 Q And Account 0188 I guess hasn't even been created yet.

20 A That's correct.

21 Q Okay. And then two weeks later, the loan is refunded. Is
22 that correct?

23 A Yes.

24 Q Okay. Is that something a bank typically does? I mean,
25 how do you -- your borrower is Genesis, correct?

Bates - Cross/Hillyer

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1 A Correct.

2 Q Okay. And so Genesis thinks their balance is zero for two
3 weeks. Is that a fair statement?

4 A Yes.

5 Q Okay. And then you make their balance 4.4 million again.
6 Is that correct?

7 A Correct.

8 Q Okay. And so you can just make their loan balance
9 whatever you want. Anywhere from zero to what.

10 A Well, the underlying entry was reversed.

11 Q Okay. So but --

12 A It was unwound. The situation was unwound, as opposed to
13 readvancing.

14 Q Okay. So that's what I'm asking you. Is the money that's
15 in the 0188 account, that is loan proceeds from the Genesis
16 loan being taken from zero to \$4.4 million around approximately
17 early September.

18 A Technically, yes.

19 Q Okay. So your sworn testimony today is that you believe
20 the DACA was released.

21 A Yes.

22 Q And I'm talking about the DACA on 3992.

23 A Correct.

24 Q Okay. And you believe that during all this time period?
25 Is that correct?

Bates - Cross/Hillyer

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1 A Yes.

2 Q Okay. And you still believe it today?

3 A I do.

4 Q Okay. What makes you believe the DACA was released?

5 A We have very capable people. I'm kind of going back to my
6 predecessor company. And they took care of this for us. I
7 don't do the mechanics of what we're talking about here, the
8 DACA. And someone just didn't come to the office one day and
9 just say, I'm going to mess everybody around and I'm going to
10 release this DACA. It just didn't happen. I'm convinced it
11 was released.

12 Q And you just can't lay your hand on that document right
13 now.

14 A No. The research we did. There's been a lot of purging
15 of the systems with LegacyTexas, and we couldn't get to it.

16 Q But if that DACA had been released, then that money would
17 have been Prosperity Bank's collateral in the first position.

18 A That's correct.

19 Q Okay. And would still be today.

20 A Would still be.

21 Q Okay.

22 A That's correct.

23 Q As to the DACA, so the -- had you read the DACA at the
24 time that you did the sweep on August 15th?

25 A Yes. I was familiar with the document. This relationship

Bates - Cross/Hillyer

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1 had been in existence for a long time with the Bondholders and
2 the DACAs a number of years. So yes, I had read it.

3 Q No. I meant not did you read it when it was signed in
4 2017. I meant, when did you get your hands on the DACA in
5 August of 2022?

6 A Oh.

7 Q I'm saying did you sit down with a DACA and have the DACA
8 and review it and read it before you swept?

9 A I can't recall, honestly.

10 Q All right. Mr. Bates, this is my last series of questions
11 for you. I'm going to hand you back FedEx exhibits.

12 THE COURT: Do you know which one you're reaching
13 for, Mr. Hillyer?

14 MR. HILLYER: I do. It's Volume 1. It's the -- what
15 Your Honor is going to. Exhibits 22 through 25.

16 THE COURT: Thank you.

17 MR. HILLYER: Those were the exhibits that were
18 objected to. Give me one second, Your Honor.

19 (Pause)

20 BY MR. HILLYER:

21 Q Are you there, Mr. Bates?

22 A I'm trying. I'm trying. Bear with me just a second.

23 Okay. Got it.

24 Q All right. You're there. Okay. So I believe that first
25 is an email between David Parham and yourself and John Goodman.

Bates - Cross/Hillyer

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1 Is that correct? If you scroll down.

2 A Yes.

3 Q Okay. And this is in October. It starts with John
4 Goodman to you. And Mr. Goodman is asking for a status of the
5 funds at Prosperity. You respond to John Goodman that the
6 funds were used to repay a loan the funds were security for.

7 "Bondholders came in and gave us notice and pulled the
8 available funds from all accounts. Loan was readvanced and the
9 funds placed in" -- well, that's awful. The exhibit -- "is
10 escrow account still secures our loan." Okay. You see -- is
11 that all?

12 A Yes.

13 Q Okay. And so is this an email been altered in any way?

14 A I don't believe so.

15 Q Is this a fair and accurate email exchange between you --
16 and you know who David Parham was?

17 A I didn't. I mean, just by name.

18 Q Okay. You understand he's an attorney at Akerman.

19 A Right.

20 Q Okay.

21 A Was he Goodman's attorney?

22 Q Normally the questions only go one way, but yes, he was.

23 A Okay.

24 MR. HILLYER: Okay. Your Honor, I'd ask that Exhibit
25 22 be admitted.

Bates - Cross/Hillyer

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1 THE COURT: Any objection to the admission of FedEx's
2 22? Okay. No objection. It is hereby admitted.

3 (FedEx-ARRIS Exhibit 22 admitted into evidence)

4 MR. HILLYER: Pushing on Exhibit 23, Mr. Bates.

5 THE WITNESS: Okay. Okay.

6 MR. HILLYER: This is --

7 THE COURT: Wait. Wait. Just so I -- okay, yes, I
8 see that now. Yes, thank you. Admitted.

9 BY MR. HILLYER:

10 Q And this is an email exchange between John Goodman and
11 yourself. Is that correct?

12 A Yes.

13 Q Looks like the email chain starts in December and carries
14 through early January of 2023.

15 A Yes.

16 Q Is that correct? Okay. Does this email look like a --
17 it's been altered in any way?

18 A No, sir. No, sir.

19 Q Okay. And so to have some context, what -- do you
20 remember what Mr. Goodman is asking you in this email?

21 A Let me just check with the -- sometime in the fourth
22 quarter of that year, John Goodman got involved with Goodman
23 Networks and was trying to keep them out of bankruptcy, I
24 believe.

25 Q Okay. I'm looking specifically at the bottom. It looks

Bates - Cross/Hillyer

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1 like Mr. Goodman is requesting the Bank send the money to
2 Goodman Networks or to the Bond Trustee. You see that?

3 A Yes.

4 Q Okay. And you respond that we -- does that mean
5 Prosperity Bank?

6 A Correct.

7 Q Okay. "The bank is not in a position to do that yet. The
8 restructure of the debt was delayed on the Genesis side. We
9 hope to have it approved and finish documenting early next
10 week, the three million line that is. Your debt is later in
11 the week."

12 So give me some context. That is, the bank won't send the
13 funds to the debtor or the Bond Trustee until they get some
14 debt worked out with Genesis?

15 A Well, he was trying to get in the situation and just
16 asking a lot of questions like he normally does. And we were
17 working on a debt restructure. We continue to.

18 MR. HILLYER: Your Honor, I ask that Exhibit 23 be
19 admitted.

20 THE COURT: Any objection to the admission of 23?
21 Hearing no objections, it's hereby admitted.

22 (FedEx-ARRIS Exhibit 23 admitted into evidence)

23 MR. HILLYER: Exhibit 24, Mr. Bates. We're almost
24 there.

25 THE WITNESS: Okay. No problem.

Bates - Cross/Hillyer

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1 BY MR. HILLYER:

2 Q You familiar with that email?

3 A Yes.

4 Q Okay. This is an email that you sent in late January of
5 2023, last day of January. Is that correct?

6 A Yes.

7 Q Okay. And that's from you to John Goodman, James Goodman,
8 Zach Wiebe, and Taylor Burns, correct?

9 A Yes.

10 Q Okay. And again it says that -- it says GIH 1.4 million
11 transaction summary. What is GIH?

12 A I believe GIH is John Goodman's holding company.

13 Q Okay. So the first sentence you wrote it says, "We're
14 still trying to get the debt of Genesis restructured so that
15 the escrow can be released, but we're not there." Is the
16 escrow you're talking about the funds in the 0188 account?

17 A Correct.

18 Q Okay. And this is January. They were put into the 0188
19 account in August of '22. Is that correct?

20 A Yes.

21 Q So they've been in there, call it almost four months,
22 going on five at this point?

23 A Yes.

24 Q Okay. And the Bank is still holding it until the Genesis
25 loan can be restructured.

Bates - Cross/Hillyer

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1 A Well, we were still holding it while the -- you know, we
2 determined who -- where the money could get -- should go.

3 Q Okay. But your sentence says, "The debt of Genesis
4 restructured so the cash in escrow can be released." So I'm
5 asking you is that a condition? As the loan gets restructured,
6 the cash gets released?

7 A No.

8 Q They're two independent things?

9 A Yeah. I was --

10 Q Okay. Then let me ask --

11 A That was a loan. That was a loan that would not include
12 the pledge of liquidity.

13 Q Okay. So let me ask you. If this is a loan with GIH for
14 \$1.4 million, why is the 0188 account and the funds in that
15 account, why is that a part of this email?

16 A I'm looking at it. I'm sorry.

17 Q Sure.

18 A I believe it goes back to the fact that a piece of this
19 debt was John Goodman's debt originally. And they were trying
20 to repaper it in that way -- that manner.

21 Q I'm not sure I follow you. Let me rephrase the question.
22 How is the 0188 account involved in Goodman GIH's term loan?

23 A It's not.

24 Q Okay.

25 MR. HILLYER: Give me one second, Your Honor.

Bates - Cross/Hillyer

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1 THE COURT: Take your time.

2 MR. HILLYER: All right. Your Honor, I would ask
3 that Exhibit 25 be admitted.

4 THE COURT: We were on 24?

5 MR. HILLYER: No. Okay. That's even better. Let's
6 stop at 24. I believe -- Philip, was the very last one 25?

7 MR. GUFFY: Let me check. I believe that's --

8 MR. HILLYER: Was that the objections?

9 MR. GUFFY: Yes, that's correct.

10 THE COURT: So that I'm clear, Mr. Hillyer, you're
11 asking for 24 or 25 to be admitted?

12 MR. HILLYER: 24 to be admitted.

13 THE COURT: Okay. Any objection to the admission of
14 FedEx -- excuse me. Yes. FedEx's 24. Hearing no objection,
15 it's hereby admitted.

16 (FedEx-ARRIS Exhibit 24 admitted into evidence)

17 MR. HILLYER: Okay. And we're actually going to
18 stop. We're not going to introduce 25.

19 THE COURT: Okay.

20 MR. HILLYER: We have to wait on that. For
21 housekeeping, and I'll rely on Mr. Guffy. So we've admitted
22 22, 23, and 24 at this point. That corresponds to -- okay.

23 So Your Honor, I would also ask that FedEx Exhibits
24 108, 109, 110, and 111 be admitted just for housekeeping.
25 Those are duplicative of -- those four exhibits are the same

Bates - Cross/Hillyer

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1 three exhibits we just admitted in 22, 23, and 24. Is that
2 correct?

3 MR. GUFFY: Yes, that's correct.

4 THE COURT: So you want to admit them twice?

5 MR. HILLYER: Well, I'm trying to -- we don't have
6 to. I was just trying to clear up the whole -- I believe that
7 cleared up all the objections, except for one. So no.
8 Actually, for housekeeping, we don't have to do that. They are
9 the exact same. Let's just go with 22, 23, and 24. And we'll
10 leave 108 through 111 out. There's no reason to clog it up.

11 THE COURT: Okay. Two things. We've admitted 22,
12 23, and 24. Three exhibits.

13 MR. HILLYER: Yes.

14 THE COURT: You talked about admitting 108 through
15 111, four exhibits. Are they tails?

16 MR. HILLYER: They are. 108 and 109 are the exact
17 same exhibit, but they placed a huge exhibit stamp on the
18 middle of the exhibit so you couldn't read it. We had to
19 reintroduce it --

20 THE COURT: Sneaky.

21 MR. HILLYER: -- as 109. So that's how three becomes
22 four.

23 THE COURT: All right. Okay.

24 MR. HILLYER: We do not need to admit --

25 THE COURT: You don't need to admit 108.

Bates - Cross/Hillyer

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1 MR. GUFFY: I just -- to make one suggestion for you.
2 Exhibit 22, which is the same as 108 and 109. It's actually
3 108 is 22. And that -- and it has the sticker in on top of the
4 words as you saw when you were using it. So 109 may be the
5 better one.

6 MR. HILLYER: Is 109 --

7 MR. GUFFY: Just throw it out.

8 MR. HILLYER: -- better than 22?

9 MR. GUFFY: Because 109 has the exhibit sticker in
10 the spot where it's not covering any of the text.

11 MR. HILLYER: Okay.

12 MR. GUFFY: If you want to compare 108 and 109 you
13 can see the difference.

14 MR. HILLYER: No. I trust Mr. Guffy. Your Honor,
15 that --

16 THE COURT: All right. That's not -- I see it as
17 well. So what I will do is we will push to the side 109, 110,
18 and 111.

19 MR. HILLYER: Yes.

20 THE COURT: We'll admit -- no, I got that wrong.
21 We're going -- yes.

22 MR. HILLYER: No 108.

23 THE COURT: Right. You got it.

24 MR. HILLYER: Perfect.

25 THE COURT: We are going to admit 109.

Bates - Cross/Hillyer

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1 (FedEx-ARRIS Exhibit 109 admitted into evidence)

2 THE COURT: We're not -- all right. And remind me
3 which one that's the replacement for, Mr. Guffy?

4 MR. GUFFY: 109 is a replacement for 22.

5 THE COURT: Okay. Thank you.

6 MR. HILLYER: And that's all the questions I had for
7 Mr. Bates.

8 THE COURT: Thank you very much, Mr. Hillyer.

9 MS. ARGEROPLOS: Real quick redirect, Your Honor.

10 THE COURT: Before you begin redirect, is there
11 anyone else who wishes to question him for a first time?

12 MR. PULMAN: I might.

13 THE COURT: Okay. All right.

14 Mr. Pulman.

15 MR. PULMAN: He hadn't said anything yet I want to
16 cross-examine him about.

17 THE COURT: Okay. So you're just -- you're putting a
18 pin in it?

19 MR. PULMAN: Yeah. Just reserving until the very
20 end.

21 THE COURT: Okay. And I'm going to have questions of
22 the witness. So would you like to ask your questions before or
23 after mine?

24 MS. ARGEROPLOS: After.

25 THE COURT: Okay.

Bates - Continued Cross/Clarke

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1 MS. ARGEROPLOS: I'll sit down. Thank you.

2 MR. CLARKE: Your Honor, I just have a couple of
3 quick ones. And if you want, I can go or --

4 THE COURT: Fair enough.

5 MR. CLARKE: Mr. Guffy, can you bring up Prosperity
6 Exhibit 9? Let's scroll to the top.

7 CROSS-EXAMINATION CONTINUED

8 BY MR. CLARKE:

9 Q This is titled "Assignment Deposit Account." Is this the
10 pledge agreement we've been discussing today that grants
11 Prosperity Bank a pledge of Account 3992?

12 A Yes, it is.

13 MR. CLARKE: Thanks. Can we scroll down to the
14 signature page, please?

15 BY MR. CLARKE:

16 Q This is signed by James E. Goodman, manager of Genesis
17 Networks Enterprises and Genesis Networks Global Services.
18 It's also signed by James Goodman, as chief executive officer
19 of Goodman Networks Incorporated. Do you see all that?

20 A Yes, sir.

21 Q So Goodman Networks Incorporated is the grantor.

22 A Correct.

23 Q Okay. You had mentioned I think you called it a deemed
24 insecure clause.

25 MR. CLARKE: Philip, could we scroll up? It's midway

Bates - Continued Cross/Clarke

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1 through the agreement in the default section. Yeah, it may be
2 frozen, Philip. Or you may not have your mouse --

3 MR. GUFFY: It's moved on my screen. I'm just
4 waiting for the connection.

5 THE COURT: Okay. Just give it a minute.

6 MR. CLARKE: Okay. Here it is. Philip, maybe you
7 can --

8 THE COURT: Blow it up.

9 MR. CLARKE: -- blow it up a little bit.

10 BY MR. CLARKE:

11 Q And so I think what you meant by deemed insecured in this
12 default section is the adverse change provision, which --

13 MR. CLARKE: Philip, scroll down just a touch and it
14 should be right here.

15 BY MR. CLARKE:

16 Q "A material adverse change occurs in borrowers or grantors
17 financial condition, or lender believes the prospect of payment
18 or performance of the indebtedness is impaired."

19 Is that the provision you were referencing?

20 A Yes.

21 Q And then we don't need to move the page at all. But at
22 the bottom here, it says, "Rights and remedies of default.
23 Upon the occurrence of an event of default" -- which is from
24 the section we just read, so it includes adverse change -- "or
25 at any time thereafter, lender may exercise any one or more of

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1 the following rights and remedies."

2 The second remedy there is application of account
3 proceeds, and it says, "Lender may take directly all funds in
4 the account and apply them to the indebtedness."

5 Do you see that?

6 A Yes.

7 Q And again, James Goodman signed this in his officer
8 capacity as a Goodman Networks CEO.

9 A Yes.

10 Q And as the Genesis Networks -- I forget the title, but as
11 the principal of Genesis.

12 A Yes.

13 Q And so your statement before that James didn't authorize
14 Prosperity to take the funds in the 3992 account, is that
15 accurate? Didn't he authorize you to do it right here?

16 A Yes, he did.

17 Q And when you called James on, I guess it would have been
18 August 15th, you said he didn't affirmatively object?

19 A That's correct.

20 Q Okay. So you testified before that he was personally
21 liable on this loan. And what you're proposing was to take
22 Goodman Networks cash and discharge a liability, a loan on
23 which Mr. Goodman had personal liability. Is that right?

24 A Correct.

25 Q So why in the world would he object to that, when he had

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1 already given you permission through this pledge agreement?

2 A Right.

3 Q Okay. You testified about a potential release of the
4 deposit account control agreement. We talked about some
5 letters and emails before, one from Michelle Ross of Reed
6 Smith. When you receive correspondence from Ms. Ross, did you
7 or Prosperity ever reply that the DACA had been released?

8 A I don't recall this far.

9 Q And when Ms. LaMotta sent a notice of exclusive control,
10 did you or Prosperity ever reply that the DACA had been
11 released?

12 A No. I'm trying to think. I believe we turned it over to
13 our legal group.

14 Q Okay. And in connection with this dispute regarding the
15 subject funds, did Prosperity seek discovery from the
16 Bondholders or the Indenture Trustee or the collateral agent to
17 determine if a release had ever been signed and delivered?

18 A I believe we did.

19 Q And was anything produced?

20 A No.

21 MR. CLARKE: No further questions, Your Honor.

22 THE COURT: Thank you, Mr. Clarke. All right.

23 Again, before I turn Prosperity's witness back to Prosperity's
24 counsel, is there anyone else who wishes to ask any questions?

25 Mr. Pulman? Are you looking for the assignment of

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1 the deposit account --

2 MR. PULMAN: Yes, ma'am.

3 THE COURT: -- Mr. Pulman? All right. That would be
4 Prosperity Exhibit 9.

5 MR. PULMAN: Make it just a little bit bigger for me.
6 And go down to the default provision. Yeah, right there.

7 MR. CLARKE: Your Honor.

8 MS. ARGEROPLOS: Your Honor. Yeah. Well, yeah. I
9 mean, Mr. Goodman is here because he was subpoenaed to testify
10 by FedEx. So I understand his counsel's role at this hearing
11 to be defending that testimony. I don't recall him being a
12 party to this motion or being involved in any of the process at
13 all, or any counsel for James Goodman.

14 I know -- I think there was a substitution. Mr.
15 Goodman has never been involved. I don't really understand why
16 Mr. Pulman is trying to ask questions. I don't think he should
17 be allowed to ask questions.

18 THE COURT: Thank you.

19 Mr. Pulman.

20 MR. PULMAN: Your Honor, of course Mr. James E.
21 Goodman is a party in interest. As a technical matter, that
22 allows me to ask whatever questions on a contested matter,
23 particularly a 9019.

24 As a practical matter, everybody's been talking about
25 Mr. Goodman for two days. There's a couple of questions that I

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1 would like to ask Mr. Bates about this particular conversation
2 and these documents. And I think it's completely appropriate.

3 THE COURT: Thank you.

4 Anything further, Ms. Argeroplos?

5 MS. ARGEROPLOS: No, Your Honor. I've said plenty.

6 THE COURT: Okay. Thank you. I'm going to overrule
7 the objection. I'm going to give Mr. Pulman a little bit of
8 leeway here. Mr. Goodman is a party in interest in the
9 proceedings. And again, I'm going to -- and I think that's
10 what you're getting at. I'll allow the question to be limited,
11 given that we've already got a lot of things going on. But
12 I'll let you question him on this document.

13 MR. PULMAN: Would you move it down just a little bit
14 for me?

15 CROSS-EXAMINATION

16 BY MR. PULMAN:

17 Q Mr. Bates, my name is Randy Pulman. I'm James E.
18 Goodman's lawyer. Got retained a week or so ago. See this
19 provision that's here in Exhibit 41. Cure provision?

20 A Yes.

21 Q I haven't seen all the discovery. I haven't tried to look
22 through all the documents. But I haven't seen in front of the
23 Court any default notices, default letters. Anything that gave
24 Mr. James E. Goodman or Genesis Networks an opportunity to cure
25 your default of an adverse change -- material adverse change in

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1 condition? Did you send any of those out?

2 A No, I did not.

3 Q And so how would Mr. James E. Goodman or Genesis Networks
4 have known on August the 15th when you offset the deposit
5 account against the loan? How would they know that that had
6 even happened?

7 A Because I communicated to him verbally --

8 Q Verbally.

9 A -- in a phone conversation.

10 Q On the evening of the 12th?

11 A No.

12 Q After that? I said the 12th because we were looking at
13 the emails. That's the email where you say, or Mr. Goodman
14 says, "Let's have a phone call about this." And I thought it
15 was on the 12th that you said the two of you had talked. You
16 told him, you deemed yourself insecure and you were calling the
17 note. And he didn't say anything in response.

18 Is that your testimony?

19 A That was the 15th that conversation occurred.

20 Q Oh, that was on the 15th?

21 A Correct.

22 Q Okay. After the 15th, did Goodman, John -- did James
23 Goodman or Genesis, did they get any notes or letters or
24 anything giving them notice that this had actually occurred?

25 MS. ARGEROPLOS: Objection as to form. I don't know

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1 how he would know what --

2 MR. PULMAN: A letter, an email.

3 MS. ARGEROPLOS: (Indiscernible).

4 MR. PULMAN: Some writing.

5 THE COURT: The objection is to whether or not
6 someone received it, I think. You can rephrase the question.

7 BY MR. PULMAN:

8 Q Did the Bank send anything to its borrower; a letter, an
9 email, a notice, anything giving the borrower a right to cure,
10 a notice to cure, or letting the borrower know that these --
11 this note and this deposit account had been offset?

12 A Not in written format. But I gave verbal communication to
13 James and Zach, as well.

14 Q That you were going to do that. That that was your
15 intent.

16 A And that I had done it.

17 Q And that had already been done.

18 A Right.

19 Q Is what you're saying.

20 A Right.

21 Q So before you even talked to Mr. Goodman on the 15th --

22 A No.

23 Q -- those --

24 A I'm sorry. No. When I talked to him it had not been done
25 yet.

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1 Q Okay. You did it after you talked to him?

2 A Correct.

3 Q Okay. So when you were talking to him on the 15th, you
4 were telling him that's what you were going to do?

5 A Correct.

6 Q Okay. Hadn't done it yet.

7 A That's correct.

8 Q After you did it, after the Bank did it in consultation
9 with the credit department and house counsel and whoever you
10 talked to, did you send him any notice that it had now been
11 done?

12 A Not in a written format. In a verbal format.

13 Q Okay. And it was -- was that another call after the 15th?

14 A Yes. Subsequent calls with me and Zach Weibe as well.

15 Q Okay. Let me be very specific. With James E. Goodman,
16 did you have another call with him after the 15th of August,
17 where you told him we have offset this deposit account against
18 this loan?

19 A I can't specifically recall that conversation.

20 MR. PULMAN: Okay. Thank you, Your Honor. Thank you
21 for your indulgence.

22 THE COURT: Thank you. All right.

23 EXAMINATION

24 BY THE COURT:

25 Q Mr. Bates, I have a few questions. And I apologize. I'm

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1 not going to be as organized as counsel when it comes to the
2 exhibits.

3 The first line of questioning that I'd like to explore
4 with you, Mr. Bates, is exactly when you knew that UMB and the
5 Bondholders had a DACA in place. And I understand based upon
6 your testimony that even as you sit here today that you believe
7 that that DACA was released.

8 Is that accurate?

9 A Yes, ma'am.

10 Q All right. And at any point, if you feel that I'm putting
11 words in your mouth, and it's -- I'm not trying to make your
12 testimony inaccurate at all. I'm just trying to kind of get to
13 the bottom line of it.

14 During questioning, the -- I'm not sure if it was your
15 counsel, or if it was Mr. Clarke. You went through a series of
16 emails and exhibits where Ms. Ross, Michelle Ross with Reed
17 Smith, was requesting from your treasury division information
18 on the notice provisions.

19 Do you recall that?

20 A Yes.

21 Q Okay. And I think if I'm not mistaken that that's Exhibit
22 48.

23 THE COURT: Why thank you, Mr. Guffy. Okay.

24 BY THE COURT:

25 Q And I believe at the time that you testified that when you

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1 received those emails or the day before, you were provided with
2 the DACA. Is that correct?

3 A That's correct.

4 Q Okay. And so I just want to understand. If you were
5 provided with the DACA somewhere between it looks like August
6 9th and August 10th, Prosperity swept the funds in the Goodman
7 account after that?

8 A Yes.

9 Q Okay.

10 A On 8/16. 8/15, excuse me, was the sweep.

11 Q And I guess my question is as simple as this. Why?

12 A We had not given notice of control. The DACA was
13 provided. And we were convinced that the DACA was released and
14 we would find that release. And --

15 Q Other than -- oh, please go on.

16 A Go ahead. I'm sorry.

17 Q Okay. Other than the missing flag, was there anyone
18 within the Bank that thought -- could basically say, ah, it was
19 released on X date in connection with Y transaction. Was there
20 anything other than the missing flag that led you to believe it
21 was released?

22 A I guess what I would say is it was the confidence of my
23 teammates, that it was released. And they knew specifically it
24 was released. They're very capable people.

25 Q So there were DACAs in place. And I recognize that you

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1 weren't here for all of the testimony before, but I think Mr.
2 Clarke took you through two or three different DACA accounts
3 that were held by the Bondholders.

4 Did you believe they were all released?

5 A No.

6 Q Just that one.

7 A Just that one.

8 Q Okay.

9 A Yeah, that's correct.

10 Q All right. And I believe there's a variety of reasons why
11 people don't ask you very pointed questions with respect to
12 Account 0188. So I'm going to ask you the pointed question.

13 When you -- I think your testimony was you reversed the
14 transaction. You reversed essentially, the application of
15 funds from 3992 out -- back out of the Genesis payments, and
16 you put those into 0188. In your own words, what was
17 Prosperity doing there?

18 A That was really done by our legal group internally.

19 Q Okay.

20 A I was not involved in that process.

21 Q And again, correct me if I'm wrong. It was your testimony
22 that your legal group got involved, or you involved the legal
23 group, should I say, after the notice of exclusive control was
24 received?

25 A Yes.

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1 Q Okay. And how quickly thereafter was the transaction
2 reversed?

3 A I believe it was a week and a half or so.

4 Q Okay.

5 A I'm not sure exactly.

6 Q You said that at some point that -- and I don't want to
7 put words in your mouth. I think you said you were removed
8 from the account. Is that correct?

9 A Correct.

10 Q Okay. And when did that happen?

11 A It was -- (coughs) excuse me.

12 Q Take a moment.

13 A It was somewhere in January and February.

14 Q Okay.

15 A Excuse me.

16 Q Take your time. And is it correct that you were removed
17 from the Goodman account, but you remained on the Genesis
18 account?

19 A I was removed from the Genesis account.

20 Q Removed from the Genesis account. Okay. Thank you for
21 the clarification. And give me one moment.

22 So were you removed from the Genesis account at some point
23 after the January 31st email which was Exhibit 24. FedEx's 24.
24 There's an email from you to Mr. John Goodman copying Mr. James
25 Goodman, as well as Zach Wiebe.

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1 And it says, "John, we're still trying to get the debt of
2 Genesis Telecom the \$3 million revolver on the \$1.4 million
3 term loan restructured so the GNET cash in escrow can be
4 released, but we're not there yet." Were you still on the
5 account then?

6 A Yes.

7 Q Okay.

8 A I was still involved.

9 Q All right. And with respect to that particular email,
10 under Mr. Hillyer's questioning, I believe that you testified
11 that you didn't believe that the restructure of the Genesis
12 debt and the release of what you call in here the cash in
13 escrow, you didn't believe that those were intertwined?

14 A No. I was just trying to get the debt restructured.

15 Q Okay. And --

16 A It didn't have anything to do with --

17 Q Okay.

18 A -- 1118 [sic].

19 Q And with respect to my next line of questioning, just with
20 respect to the Account 0188. Explain to me -- and again, only
21 to your knowledge. If this is a question better asked to the
22 next witness, just tell me so. How does Prosperity treat that
23 account internally?

24 A That would be a question for our legal counsel or the next
25 witness.

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1 Q Okay.

2 A I don't know.

3 THE COURT: Okay. All right. Just one moment.

4 All right. I don't think I have any other questions.

5 Thank you, Mr. Bates.

6 But now, Ms. Argeroplos.

7 MS. ARGEROPLOS: I'll be very quick, I promise.

8 THE COURT: Of course.

9 REDIRECT EXAMINATION

10 BY MS. ARGEROPLOS:

11 Q So real quick, Mr. Bates. When there were emails where
12 you used the word "escrow" to describe the 0188 account, but
13 you weren't referring to an escrow agreement or anything,
14 right?

15 A No.

16 Q Is that just because it's a familiar term?

17 A Yeah. I don't know where I got that term. It's a holding
18 account, a suspense account.

19 Q Okay. And yeah, because you said a minute ago that there
20 -- a few minutes ago that the Bank was holding the money until
21 it was determined where the funds in that 0188 account should
22 go, right?

23 A That's correct.

24 Q Okay. And let's see. In January and February of 2023,
25 when you were removed from the loan -- from the loan account,

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1 is that because -- what had the Bank done with the loan as far
2 as which department it went?

3 A There was a point there where the special assets group in
4 our company took over the management of it.

5 Q Okay. And who is the person who's managing the loan
6 account right now?

7 A David Montgomery.

8 Q Okay.

9 THE COURT: Could you clarify which account?

10 MS. ARGEROPLOS: The Genesis Networks loans.

11 THE COURT: Okay. Thank you.

12 BY MS. ARGEROPLOS:

13 Q And is that accurate?

14 A That's correct.

15 Q Thank you. Would you pick up the binder clip packet that
16 I gave you one more time? These are the Trustees exhibits.

17 It's this one. I can give you a new one if you need it.

18 A Got you. Okay.

19 Q So looking at the Trustees Exhibit E one more time, could
20 you please turn to -- let's see -- Page 4, and the last
21 paragraph where it says termination. Would you read that first
22 sentence for the Court up to Romanette 2?

23 A Okay. "This agreement may be terminated unilaterally by
24 depository bank for any reason, in its sole discretion upon 30
25 days prior written notice to all parties, provided that

1 however, the depository bank may terminate this agreement on
2 five days written notice to secured parties in the event if any
3 secured party failed to make payments to depository bank, in
4 accordance with Section 6 above." Excuse me. Gosh.

5 Q Thank you. So it's possible that the Bank could have
6 unilaterally -- I'm sorry. I'll back up. Depository bank in
7 this agreement is Prosperity, right?

8 A Correct.

9 Q LegacyTexas at the time of execution, but now Prosperity.

10 A Correct.

11 Q So it's possible that the Bank could have unilaterally
12 terminated the agreement if written notice was given to all
13 parties.

14 A That's true.

15 Q But we just don't have any documentation of any of these
16 events occurring.

17 A That's correct.

18 MS. ARGEROPLOS: Okay. That's all I have, Your
19 Honor.

20 THE COURT: Thank you, Ms. Argeroplos.

21 MS. ARGEROPLOS: Okay. Your Honor, I don't think
22 anybody else is going to ask any more questions. So I think it
23 might be time for a quick bathroom break. But I think based on
24 all the testimony that's been brought out, I don't think Mr.
25 Montgomery's is going to be very quick. So if it's okay with

1 everybody else, we can take a quick break and then just put
2 David on?

3 THE COURT: Okay. Just give me one moment.

4 MS. ARGEROPLOS: Yeah.

5 (Pause)

6 THE COURT: I don't think I have any questions or any
7 further questions.

8 Thank you very much for your testimony, Mr. Bates.

9 THE WITNESS: Thank you, ma'am.

10 THE COURT: Appreciate you being here today.

11 THE WITNESS: Absolutely.

12 THE COURT: You may step down and leave your mess.

13 (Witness excused)

14 THE COURT: All right. It's 11:11 now. Do we want
15 to start a new witness?

16 MR. RUKAVINA: Your Honor, I desperately need to --

17 THE COURT: After a convenience break.

18 MR. RUKAVINA: Yeah. That's the key for me. Yes. I
19 just got to go --

20 MS. ARGEROPLOS: Yeah. I might have said the wrong
21 word. I do not think that David Montgomery's testimony will
22 take very long. So I think we can cover him before lunch.

23 THE COURT: Fair enough. All right. It's 11:11.
24 We'll be in recess until 11:25.

25 THE CLERK: All rise.

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1 (Recess at 11:12 a.m./Reconvened at 11:29 a.m.)

2 THE COURT: We're going to go back on the record in
3 Case Number 22-31641. All right. When we last broke, we had
4 concluded Mr. Bates' testimony.

5 Ms. Argeroplos?

6 MS. ARGEROPLOS: Prosperity calls David Montgomery.

7 THE COURT: Please. I'll go ahead and swear you in.
8 If you could raise your right hand for me.

9 DAVID MONTGOMERY, PROSPERITY'S WITNESS, SWORN

10 THE COURT: Thank you very much. Please be seated.

11 THE WITNESS: Thanks.

12 DIRECT EXAMINATION

13 BY MS. ARGEROPLOS:

14 Q Could you state your full name, please?

15 A David Robert Montgomery.

16 Q Did you listen to Mr. Seidel's testimony yesterday?

17 A No.

18 Q Has anyone discussed that testimony with you?

19 A No.

20 Q Great. Are the Genesis loans, and you weren't here for
21 this but we've been referring to the Genesis loans as
22 Prosperity's loans to Genesis Networks Telecom Services and
23 Genesis Networks Global Services. Are those two loans under
24 the control of special assets now?

25 A Yes.

1 Q When did that occur?

2 A Midway through the first quarter of this year.

3 Q And after special assets took over, was Mr. Bates
4 instructed not to communicate with the Genesis borrowers or
5 Goodman Networks after that?

6 A Yes.

7 Q And you're familiar with the pay down of the Genesis loans
8 that occurred on August 15th of 2022?

9 A Yes.

10 Q And that the transaction was unwound on August 30th of
11 2022. Is that right?

12 A Yes.

13 Q In between -- in that time period, was the Bank looking
14 for a release document that may nor may not have existed?

15 A I believe that we were, yes.

16 Q And could the Bank confirm Bater's insistence at that time
17 that there was a release document?

18 A No.

19 Q So why were the funds put into the 0188 account instead of
20 the 3992 account?

21 A For a couple reasons.

22 One, just for control. We -- that's a bank account or
23 styled in Prosperity's bank name. So no opportunity for anyone
24 outside the Bank to effect any transactions on the account.
25 And secondly, I think we were just looking for a referee at the

1 time for what we should do with the funds.

2 Q And nobody -- can anyone inside the Bank access the 0188
3 account?

4 A Only with approval of our legal department.

5 Q Okay. Is it a customer account, the 0188?

6 A No. It's styled in the Bank's name.

7 Q Okay. In terms of whether it's a deposit account or
8 something like an account receivable, which is it more like?

9 A It's more like a deposit account.

10 Q Okay. And so having the knowledge of everything that went
11 in on August of 2022 now, you know, what is the Bank's position
12 on the pay down of the Genesis loans with funds from the 3992
13 account?

14 A My opinion is it was -- shouldn't have happened. It was
15 improper.

16 Q And why don't you think it was proper?

17 A I don't think we had a default at the time. And so
18 applying the funds was not justified, in my opinion.

19 Q Not a monetary default?

20 A No.

21 Q And had the account, the 3992 not been swept, would the
22 Bondholders have gotten the funds after the notice of control
23 was received the very next day?

24 A Yes, I believe that --

25 Q Okay. And do you --

1 A -- would have happened.

2 Q -- think that's what should have happened?

3 A I do.

4 Q And then you recall that this bankruptcy case was filed on
5 September 6th of 2022. So only a week later, right?

6 A Yes.

7 Q And at that time, the funds were in the 0188 account.

8 A Yes.

9 Q And so the status quo on September 6th of 2022 was that's
10 where the funds were?

11 A Yes.

12 Q And has Prosperity done anything with the funds since
13 then?

14 A No.

15 Q Are we just waiting for -- is Prosperity just waiting for
16 the Court to tell them what to do?

17 A Yes.

18 Q Do you believe that the Bank has a superior interest in
19 the funds in the 0188 account?

20 A I do not.

21 MS. ARGEROPLOS: May I approach?

22 THE COURT: Of course.

23 MS. ARGEROPLOS: I'm showing you, it's Docket Number
24 398-54 which is FedEx Exhibit 54. It's also been marked as
25 Docket Number 399-112. But the one I've got is docket stamped

1 as 398-54, and that's the one that Mr. Montgomery has.

2 BY MS. ARGEROPLOS:

3 Q Do you remember sending this email on March 24th, 2023, to
4 James Goodman?

5 A I do.

6 Q And you're telling him we filed a motion for an agreed
7 order to release the cash held in escrow to the bankruptcy
8 trustee. Knowing, you know -- looking at that now, was that an
9 accurate statement?

10 A I believe it was. Or at least that was in process.

11 Q And, let's see. Were you saying that Prosperity was
12 trying to ask the Court to allow Prosperity to keep the cash in
13 that account?

14 A No. Not at this time.

15 Q Okay. So is that the Bank's position, that were we trying
16 to assert an interest in that cash at this time?

17 A No.

18 Q Does the Bank think of the 0188 account as its own
19 collateral for the Genesis loan?

20 A No.

21 Q Do you remember testifying in your deposition that was on
22 September 6th of this year, did you testify that the -- let's
23 see. Did you testify that you didn't think that Goodman
24 Networks received any value from Prosperity in exchange for
25 that pledge of the 3992 account?

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1 A I did.

2 Q Did you testify that you thought that the Bank acted in
3 bad faith?

4 A I don't believe I did, no.

5 MS. ARGEROPLOS: Okay. That's all I have.

6 THE COURT: Thank you, Ms. Argeroplos.

7 Cross-examination? Mr. Clarke?

8 CROSS-EXAMINATION

9 BY MR. CLARKE:

10 Q Good morning, Mr. Montgomery. My name is Brian Clarke. I
11 represent the Secured Bondholders and UMB Bank as indenture
12 trustee. I just have a couple questions this morning.

13 Counsel just referenced your deposition on September 6th.
14 Were you the Prosperity Bank Rule 30(b)(6) representative? Do
15 you remember that term?

16 A I don't remember the term. But I was the Bank
17 representative on that matter. Yes, sir.

18 Q Okay. During your deposition testimony, there were a
19 series of questions asked by Mr. Hillyer regarding the
20 application of the subject funds in the 3992 account to the
21 Genesis loan. And let me just break that down. The 3992
22 account, you're familiar with that account?

23 A Yes, sir.

24 Q And the Genesis loan, those are the Genesis term loans,
25 you're familiar with those loans?

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1 A Yes, sir.

2 Q Okay. And the Genesis loans, well so Genesis Networks, is
3 that owned and controlled by James Goodman?

4 A Yes, sir. I believe it is.

5 Q And did he personally guarantee those loans?

6 A He did.

7 Q Is it your understanding that at some point, the 3992 was
8 pledged to support the Genesis loans?

9 A Yes, sir.

10 MR. CLARKE: Okay. Just real quick, we've covered
11 this with some others. But let's take a quick look, Philip, at
12 Exhibit 45.

13 THE COURT: Are you pulling that up, Mr. Guffy?

14 MR. GUFFY: I am, as soon as my computer will let me.

15 THE COURT: Take your time.

16 THE WITNESS: Is that going to be up here?

17 MR. CLARKE: Yeah, it's going to come up.

18 THE WITNESS: Okay. Thank you, sir.

19 MR. CLARKE: It'll come up on the screen so you don't
20 have to page turn.

21 BY MR. CLARKE:

22 Q Let's look at Section 5. And so this is the deposit
23 account control agreement I just referenced. You testified a
24 few moments ago that, and correct me if I'm misstating it, I
25 don't have a transcript, you know, that Prosperity doesn't

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1 claim an interest in these funds, and that the application of
2 the funds to the Genesis loans, did you say improper?

3 A I think it was incorrect. Yes, sir.

4 Q Incorrect. Okay. This Section 5 is titled "Subordination
5 By Depository Bank." Do you see that?

6 A Yes, sir.

7 Q And in your role with special assets within the bank, are
8 you familiar with how deposit account and control agreements
9 work?

10 A Yes, sir.

11 Q Have you ever seen a provision like this?

12 A Yes, sir.

13 Q The first sentence says that the company and the
14 depository bank acknowledge notice of and receipt and recognize
15 secure parties continuing security interest in the deposit
16 account, and in all items deposited in the deposit account and
17 in the proceeds there of. And so have you seen a clause like
18 that before?

19 A Yes, sir.

20 Q Do you understand that to mean that the Bank is
21 recognizing that the collateral agent is secured by the deposit
22 account as well as the proceeds of that account?

23 A Yes, sir.

24 Q The next sentence says that the Bank hereby subordinates
25 any statutory or contractual right or claim of offset or lien

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1 resulting from any transaction which involves the deposit
2 account. Have you ever seen a provision like that before?

3 A Yes, sir.

4 Q And so do you understand that to mean that any lien
5 granted by the company, Goodman Networks, to Prosperity Bank
6 over that account would be subordinate to the lien of the
7 collateral agent?

8 A Yes, sir.

9 Q Thank you. And so just touching on your testimony before
10 in your deposition, at one point in the deposition with
11 Mr. Hillyer --

12 MR. CLARKE: For the record this is at Page 70 to 71
13 of the depo transcript that's been admitted as, I think it's
14 designated as an exhibit by a couple parties. I don't have the
15 number in front of me. Just bear with me, for the record.

16 UNIDENTIFIED SPEAKER: 149.

17 MR. CLARKE: So it's 149 on the Objecting Creditors.
18 And then we have it as Bondholders' 72.

19 BY MR. CLARKE:

20 Q You testified regarding the application of the subject
21 funds in the 3992 account to the Genesis loan, "My belief, and
22 I think the Bank's position, is that we were not authorized or
23 should have done that. And when we came to that conclusion
24 with a broader audience, we immediately reversed the
25 transaction because we felt that was the right and correct

Montgomery - Cross/Clarke

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1 thing to do." It sounds like that's still the Bank's position
2 today.

3 A Yes, sir.

4 Q Okay. Shortly after that back and forth with Mr. Hillyer,
5 there was a discussion regarding the internal accounting at
6 Prosperity regarding the application of the subject funds in
7 the 3992 account to the Genesis loan. Do you recall those
8 questions?

9 A I do.

10 Q Is your testimony that no cash ever left the bank when the
11 subject funds in the 3992 account were applied to the Genesis
12 loan?

13 A That's correct.

14 Q And did Prosperity receive any cash as a result of that
15 application?

16 A No.

17 Q Is it correct to say that in applying the subject funds in
18 the 3992 account to the Genesis loan, you had the removal of a
19 deposit liability on the 3992 account, and the removal of an
20 asset on the Bank's balance sheet that would be represented by
21 the loan interest on the Genesis loan?

22 A That's correct.

23 Q And so no change in the Bank's cash?

24 A No.

25 Q And no change -- no other accounting change.

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1 A No, sir.

2 Q There was also a series of questions with Mr. Hillyer as
3 well just now with Ms. Argeroplos about this, the nature of the
4 account and whether it is, "a deposit account." Do you recall
5 those questions?

6 A Yes, sir, I do.

7 Q You said there's no customer on the account. Is that
8 right?

9 A Correct.

10 Q I know you're not a lawyer. Well, let me ask you. Are
11 you a lawyer?

12 A No, I'm not.

13 Q Okay. Sorry, I didn't mean to assume. And I'm not
14 looking at a gotcha here, but are you familiar with the Uniform
15 Commercial Code?

16 A Yes, sir.

17 Q You know what it is? Do you know how the Uniform
18 Commercial Code defines deposit account?

19 A No, sir.

20 Q So there's no customer on the account. Can any party,
21 whether it's the Trustee or, you know, Goodman Networks when
22 that was still an operating business, could they demand the
23 funds from the 0188 account like a typical customer demand
24 deposit account?

25 A I mean, they could make that request. But it would have

Montgomery - Cross/Clarke

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1 just been --

2 Q But you wouldn't have --

3 A -- referred to our --

4 Q -- to honor it.

5 A No, sir.

6 Q Yeah, okay. And with a regular deposit account, demand
7 deposit account, you would have to honor it because if they
8 were your customer.

9 A Yeah, subject to authorized signer and availability of
10 funds and such.

11 Q Correct. Can anybody deposit anything in that account?

12 A No, sir. It would have to be internally initiated.

13 Q Is it a savings account? I mean, is anyone earning
14 interest on that account balance?

15 A I'm not certain on that.

16 MR. CLARKE: Okay. Philip, just real quick let's
17 pull up the Bank's responses to the RFAs. I forget the exhibit
18 number. Okay. Why don't we scroll down. Slow down, slow
19 down, slow down.

20 THE COURT: This is Bondholders' 116?

21 MR. CLARKE: I believe it's --

22 MR. GUFFY: Yes, Your Honor.

23 MR. CLARKE: I believe it's --

24 MR. GUFFY: (Indiscernible).

25 MR. CLARKE: -- FedEx 116.

Montgomery - Cross/Clarke

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1 THE COURT: Okay. Thank you.

2 MR. CLARKE: All right. Scroll up. I think it's
3 number six. Maybe it's five. Oh, go up. Well, we can start
4 with nine.

5 BY MR. CLARKE:

6 Q This says admit that the Bondholders --

7 THE COURT: For identification, Mr. Clarke, are these
8 RFAs that were issued to Prosperity? They were responses?

9 MR. CLARKE: I apologize.

10 THE COURT: Thank you.

11 BY MR. CLARKE:

12 Q These were issued to Prosperity by the Objecting
13 Creditors. Have you seen this document?

14 A I believe I have, yes.

15 Q Okay. Request number nine, this says, "Admit that the
16 Bondholders do not have control over the Prosperity account
17 ending in 0188." And the response here is deny. Do you recall
18 that?

19 A I don't recall the discussion around the response, no.

20 MR. CLARKE: Okay. Philip, let's scroll up. It
21 might be at the top. There's the request of the admission on,
22 it's -- okay, yeah. It's number one.

23 BY MR. CLARKE:

24 Q "Admit that the subject funds are located in an account
25 that is not a deposit account of the debtor." And your

Montgomery - Cross/Clarke

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1 response is admit.

2 A That's true.

3 Q Okay. Is this, from your understanding, this reference to
4 deposit account, are you talking about just the Bank's internal
5 description, or is this meant to be an answer that it's a
6 deposit account, a UCC-defined deposit account.

7 A Could you repeat the question?

8 Q Sure. I apologize. From the Bank's perspective, when it
9 characterizes this as a deposit account, is that just the way
10 the Bank describes it internally?

11 A I mean, I always thought of it as, like, a hold account.
12 I know we had spent some time in the deposition about was it
13 actually a deposit account. And I think my responses at the
14 start of that was I'm just not sure. I think we've produced
15 exhibits that would indicate that it was, but --

16 Q Okay.

17 A -- you know, in my mind, I don't think of it as a
18 traditional deposit account. I think of it more as an internal
19 hold account.

20 Q Right, because there's no customer?

21 A Correct.

22 MR. CLARKE: Okay. Your Honor, I have nothing
23 further for our direct portion.

24 THE COURT: Thank you very much, Mr. Clarke.

25 CROSS-EXAMINATION

Montgomery - Cross/Rukavina

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1 BY MR. RUKAVINA:

2 Q Sir, I represent the Bankruptcy Trustee. We don't know
3 each other. But anyway, I'm -- that's who I am. Everyone in
4 this room I think knows what special servicing is in the
5 insolvency world. But for the record, why don't you tell us
6 what that is?

7 A Basically when the Bank has doubt on the collectability of
8 the loan, it gets transferred to special assets for
9 administration.

10 Q Are the Genesis loans currently in default?

11 A No.

12 Q Okay. Were they in default earlier this year?

13 A Yes, they've been in default previously.

14 Q Is there a forbearance?

15 A There's a settlement agreement.

16 Q Have they been paid off?

17 A No, sir. They were -- well, I guess technically the
18 Genesis loans have. But there's a new loan to an entity called
19 Goodman Investment Holdings.

20 Q Okay.

21 A We paid those loans.

22 Q And do you have Any understanding as to whether the
23 Genesis entities transferred or sold or assigned their
24 businesses?

25 A I'm not sure, no. We talked about that some in the

Montgomery - Cross/Rukavina

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1 deposition. I'm not totally sure what happened to those
2 assets.

3 Q Okay.

4 MR. PULMAN: Excuse me, Your Honor. I don't think
5 any of this line of questioning has anything to do with the
6 issues that the Court has for a decision today. And so I'd ask
7 that this line of questioning be terminated about other
8 transfers, other entities.

9 MR. RUKAVINA: That's fine, Your Honor. I got what I
10 needed. I'm fine.

11 THE COURT: Okay. Thank you.

12 BY MR. RUKAVINA:

13 Q The 4.4 million and change, the account 0188, the Bank,
14 just let's be very clear about it, the Bank disclaims not just
15 the superior interest in those funds, but any interest in those
16 funds, correct?

17 A Correct.

18 Q Is it the Bank's position that those funds belong to
19 someone?

20 A It is.

21 Q The Bank might not care who, but to whom could they
22 possibly belong, to your understanding?

23 A Either to the Bondholders subject to the DACA or to the
24 bankruptcy Trustee subject to the bankruptcy.

25 MR. RUKAVINA: Thank you.

Montgomery - Cross/Hillyer

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1 CROSS-EXAMINATION

2 BY MR. HILLYER:

3 Q Good afternoon, Mr. Montgomery. I'm Cam Hillyer. I
4 represent FedEx. I deposed you earlier.

5 A Yes, sir. No D at the end, right?

6 Q I'm sorry?

7 A Hillyer, no D in your last name.

8 Q No, H-I-L-L-Y-E-R.

9 A Thank you. I know I've called you Cam all deposition.
10 I'll try to do better.

11 Q It's quite all right. I've been called worse. So I want
12 to just bring some clarity and conclusion to varying answers
13 about the 0188 account.

14 A Yes, sir.

15 Q Okay. So it is in the name of Prosperity Bank.

16 A Yes, sir.

17 Q Okay. No one has control or the ability to do anything
18 with those funds except for the Bank.

19 A Yes, sir.

20 Q Okay. And it's a deposit account.

21 A Yes, sir.

22 Q Okay. I'll ask you, you were asked some questions by I
23 believe Mr. Clarke about the Bank's and the Bondholders'
24 superior interest for liens. Do you recall that line of
25 questioning?

Montgomery - Cross/Hillyer

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1 A Yes, sir.

2 Q Okay. Do -- and you were also asked, and I have to ask
3 you again, you're not a lawyer.

4 A No, sir.

5 Q Okay. Do you have any legal training or any experience,
6 any certification in secured transactions, liens, security
7 interests?

8 A No, sir. Not but for the day-to-day experience --

9 Q Okay.

10 A -- as a banker. Yeah.

11 Q Okay. So you were previously, you looked at Exhibit 54.
12 Bear with me.

13 THE COURT: Is this FedEx 54?

14 Mr. HILLYER: No, that's my --

15 THE COURT: Bondholders?

16 Mr. HILLYER: I believe that was Bondholders.

17 THE COURT: Bondholders.

18 Mr. GUFFY: Are you talking about the one we used?

19 Mr. HILLYER: Yes.

20 Mr. GUFFY: That was your exhibit.

21 Mr. HILLYER: That was my exhibit.

22 Mr. GUFFY: Yes.

23 Mr. HILLYER: Okay. So if you'll find your FedEx
24 exhibit volume one binder.

25 THE WITNESS: I guess I don't need this one?

Montgomery - Cross/Hillyer

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1 THE COURT: If it's 54, it will be in volume two,
2 Mr. Hillyer. But I don't mean to interfere.

3 Mr. GUFFY: I put it on the screen, too.

4 Mr. RUKAVINA: Cam, it's on the screen.

5 UNIDENTIFIED SPEAKER: He's got it up.

6 Mr. HILLYER: Oh, I'm going to another exhibit.

7 THE WITNESS: You said number 54, sir?

8 BY Mr. HILLYER:

9 Q Yes, please. Okay. And this is the email that you were
10 looking at earlier, I believe. And you were asked questions
11 about the motion for an agreed order to release the cash to the
12 bankruptcy Trustee on advice of counsel. Is that correct?

13 A Yes, sir.

14 Q Okay. And you were asked earlier, so at this point on
15 3/24, is the Bank, Prosperity Bank asserting any claim to those
16 funds in the 0188 account?

17 A No, sir.

18 Q Okay. And when -- did Prosperity ever assert a claim to
19 the 0188 account after they deposited it there in September of
20 2022?

21 A I mean, we talked about that some in the deposition. But
22 no, I think that was around the time that we felt like it was
23 more likely than not that we were not going to have a claim.
24 That was ultimately what drove the deposit into the 0188
25 account.

Montgomery - Cross/Hillyer

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1 Q Okay. So I ask you to turn to Exhibit 25, please.

2 A This binder starts at 50-something.

3 THE COURT: Volume one will have 25.

4 THE WITNESS: You can use the screen if you'd like.

5 Mr. HILLYER: All right. You don't have matching
6 binders.

7 BY Mr. HILLYER:

8 Q Mr. Montgomery, that's Exhibit 25 of the Objecting
9 Parties. Are you familiar with that?

10 A Yes, sir.

11 Q Okay. And so let's just go all the way to the very top.
12 That's your email to James Goodman on March 6, 2023.

13 A Yes, sir.

14 (Pause)

15 THE COURT: Oh, I'm good.

16 Mr. HILLYER: Oh, okay. I didn't know if --

17 THE COURT: No. I appreciate it, though.

18 Mr. HILLYER: The binder to binder.

19 BY Mr. HILLYER:

20 Q Okay. So on the very top line, March 6, 2023, "We are
21 planning to motion the Court to release the cash collateral
22 back to us to satisfy the loan." Is that what you wrote?

23 A Yes, sir.

24 Q Is that a true and accurate --

25 A I don't believe that was true, no, sir.

Montgomery - Cross/Hillyer

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1 Q No, I'm asking, is this email true and accurate?

2 A No, sir.

3 Q Has it been modified in any way?

4 A No, sir. The email, I mean it's composition's accurate.

5 Q Okay.

6 A The statement's not.

7 Q Did you write that line?

8 A Yes, sir, I did.

9 Mr. HILLYER: Okay. Your Honor, I'd ask that Exhibit
10 25 be admitted.

11 THE COURT: Any objection to the admission of 25?

12 Mr. CLARKE: Well, Your Honor, I'd object given that
13 he just testified there's an error in it. And he's here to
14 testify about what he knows. And so to the extent that he -- I
15 think he should be given an opportunity to answer the question
16 on what this should have said because this doesn't sound like
17 an accurate record of what Prosperity thinks.

18 Mr. HILLYER: My response would be this is his email,
19 and he just said he wrote it, Your Honor. He can answer any
20 questions about it, but there's no reason it shouldn't be
21 admitted into evidence.

22 MS. ARGEROPLOS: He did just say that a section is
23 hearsay within -- is contained within a document. So I think
24 it's -- I think we can keep it out on that basis.

25 Mr. HILLYER: Your Honor, I'm happy to listen to --

Montgomery - Cross/Hillyer

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1 Mr. Montgomery just testified he wrote this email to James --

2 THE COURT: But --

3 Mr. HILLYER: -- to James Goodman.

4 THE COURT: The objections are overruled. The Court
5 will admit Exhibit 25.

6 (FedEx-ARRIS Exhibit 25 admitted into evidence)

7 THE COURT: And obviously the other parties have
8 rights to cross-examine him --

9 Mr. HILLYER: Thank you, Your Honor.

10 THE COURT: -- with respect to it.

11 BY Mr. HILLYER:

12 Q All right. So, Mr. Montgomery, I'll give you every
13 opportunity. You said it's inaccurate. So you wrote that.
14 And what you're saying is what you wrote is inaccurate?

15 A Yes, sir.

16 Q Okay. Is that David Montgomery, Bank representative
17 saying that, that David Montgomery the person is inaccurate?

18 A I think those are both the same person. But yeah.

19 Q Okay. Well, no. What I'm asking you is you wrote it.
20 And when you wrote that, you clearly are insinuating to
21 Mr. Goodman that the Bank is going to take the money out of the
22 0188 account to satisfy the Genesis loan.

23 A I understand what it says.

24 Q Okay. And please explain to me, what is inaccurate about
25 what it says?

Montgomery - Cross/Hillyer

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1 A Look, I know this came up in the deposition. I didn't
2 have a good explanation for this email. This is around the
3 time that I'm taking over the work out. I'm trying to get up
4 to speed on the loan and what's going on with the deposit
5 account and the bankruptcy.

6 James is probably asking for this as part of whatever he's
7 looking for in some sort of settlement. So you know, I made
8 the statement. But I think Bank's actions prior to this email
9 and my own subsequent emails once I had a better understanding
10 of where we were with respect to the cash collateral indicates
11 where the Bank was on the issue.

12 Q Okay. So is it a true statement -- strike that, Your
13 Honor. I'm trying to rectify -- are you saying that -- were
14 you lying to Mr. Goodman when you wrote that?

15 A I said this statement was inaccurate already.

16 Q No. I'm asking you, you said -- so did you intentionally
17 write a false statement?

18 A I honestly don't recall what I was thinking at the time.
19 And that's consistent with my deposition testimony. I don't
20 have a better response for you today.

21 Q All right. But if you read that email, do you agree with
22 me if you read the email, it sounds like the Bank is asserting
23 an interest in the cash collateral to satisfy the loan.

24 A It says we're planning to motion the Court.

25 Q Okay. You also made the statement yes, the funds never

Montgomery - Cross/Hillyer

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1 left the bank earlier when talking about the transfer from the
2 3992 to ultimately into 0188. Is that correct?

3 A Yes, sir. That's what I believe.

4 Q Okay. Are you just saying that in the truest sense that
5 if I take funds out of my account and transfer it to your
6 account at the same bank, and they sit there, and then you
7 transfer the funds back to me two weeks later, I guess the
8 funds never left the bank. Would that be a true statement?

9 A I agree with that, yeah.

10 Q Okay. But the funds went to different places.

11 A In this case, they went from the 3992 account to pay down
12 the loan. Yes, sir.

13 Q Okay. But the funds aren't in the original location that
14 they came from. They're just in an account at the same bank,
15 in a different account at the same bank.

16 A I know -- and I wasn't trying to be evasive in the
17 deposition on this. But I mean, it's kind of an accounting
18 issue in my mind. Like, whenever we do something on one side
19 of the balance sheet, which in this case was reduce the deposit
20 account, we have to either increase a liability account or
21 decrease an asset account. And we decreased an asset account
22 which was the loan account. So --

23 Q I understand. I'll make it clearer. 3992 has a different
24 owner than 0188, correct?

25 A Yes.

Montgomery - Cross/Hillyer

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1 Q Okay. 3992 has a different account number than 0188.

2 A Yes, sir.

3 Q Okay. And the controls over 3992 and 0188 are not the
4 same.

5 A I agree with that. Yes, sir.

6 Q Okay. Are you -- do you remember in your deposition where
7 we covered an exhibit about the critical alert procedures for
8 accounts?

9 A Vaguely.

10 Q Vaguely?

11 A Yes, sir.

12 Q Okay. I'll just draw you to it. It's 114. It should be
13 that one down there. All right. Do you remember that,
14 Mr. Montgomery?

15 A Yes, sir. These look familiar.

16 Q Okay. And we'll do it anyway because I don't want to have
17 to ask Mr. Guffy to scroll down back and forth even though he's
18 helping out. Okay. And this is Bank's internal procedures,
19 correct?

20 A It appears so, yes.

21 Q Okay. And in -- is this the, on the second page where it
22 says demand deposit accounts, checking and savings?

23 A I'm at that section.

24 Q Okay.

25 A If there's a question, I missed it.

Montgomery - Cross/Hillyer

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1 Q Right. And it says -- you see down there it says legal
2 alerts?

3 A Yes, sir, I see that.

4 Q Okay. Is that what is -- does 0188 have a legal alert --

5 A Yes, sir.

6 Q -- on it?

7 A That's my understanding.

8 Q Okay. And so that's the procedure for a demand deposit
9 account within the Bank for -- tell me what it does. Does it
10 give the legal department total control?

11 A Yeah. So if I was a user and I put that account in and
12 brought it up, there's going to be an item that pops up and
13 says this is a legal alert and you shouldn't do anything
14 without consulting the legal department.

15 Q Okay. And has that account -- do you know when the legal
16 alert was put on that account?

17 A I don't know when it was placed on it.

18 Mr. HILLYER: Okay. Your Honor, I would ask that --
19 I believe I ask that Exhibit 25 be admitted.

20 THE COURT: Yes. 25 is admitted.

21 Mr. HILLYER: Okay. And for housekeeping, I believe,
22 that was -- is 112 --

23 THE COURT: 112 is not admitted.

24 UNIDENTIFIED SPEAKER: Hold on a sec. Yeah, 112 is
25 also 25.

Montgomery - Cross/Hillyer

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1 Mr. HILLYER: Okay. I believe they have -- some of
2 them have extra chains. It would have one more. I would also
3 ask that 112 be admitted.

4 THE COURT: All right. Any objection to the
5 admission of 112? Hearing no objection, it's hereby admitted.

6 (FedEx-ARRIS Exhibit 112 admitted into evidence)

7 THE COURT: That's FedEx's 112.

8 BY Mr. HILLYER:

9 Q Okay. And so I won't make you go through all the emails.
10 The debtor, Goodman Networks, either through counsel or through
11 John Goodman or through anyone, there have been demands made
12 upon Prosperity for the turnover of the funds in 0188.

13 A From the debtor?

14 Q Yes.

15 A Yes, sir. That happened.

16 Q Okay. And the Bank refused to turn the funds over to the
17 debtor.

18 A That's correct.

19 Q Okay. And the Bondholders made demands for the funds in
20 0188.

21 A I believe that's true, as well.

22 Q Okay. And the Bank refused to turn the funds over to the
23 Bondholders.

24 A Yes, sir. That's my understanding, as well.

25 Q Okay. And so what are the conditions, it's your

Montgomery - Cross/Hillyer

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1 understanding at the Bank, what is the Bank requiring to
2 release those funds to either the Trustee or to the
3 Bondholders?

4 A Instruction of the Court.

5 Q Okay. Is that it?

6 A That's my understanding, yes.

7 Q Okay. Nothing else?

8 A I don't believe so, no.

9 Q No releases?

10 A I mean, we have a release in the settlement document
11 that's been proposed with the Trustee. But I mean, that's
12 relatively standard in banking, I think.

13 Q Okay. So, but you're saying all the terms. So the --
14 Prosperity won't turn the funds over to anyone except for the
15 settlement that's proposed that contains a release from the
16 estate and a release from the Bondholders.

17 A I think we would do whatever the Court instructed at this
18 point.

19 Q Okay.

20 A But I don't know if I'm answering your question.

21 Mr. HILLYER: No, you are.

22 I don't have anything further, Your Honor.

23 THE COURT: Thank you very much, Mr. Hillyer.

24 Any recross?

25 MS. ARGEROPLOS: I don't have any redirect.

1 THE COURT: Okay. Any redirect?

2 MR. CLARKE: Nothing further, Your Honor.

3 MR. RUKAVINA: No, Your Honor. Thank you.

4 THE COURT: All right. Let me double check my notes.

5 I don't have I have any questions of this witness. Thank you
6 very much for your testimony, sir.

7 THE WITNESS: Yes, ma'am. Thank you.

8 (Witness excused)

9 THE COURT: All right. It's a little after 12 now.
10 How many more witnesses do we have?

11 MR. LANGLEY: Just to be clear, have the movants
12 rested y'all's case at this point?

13 MS. ARGEROPLOS: Prosperity rests, Your Honor.

14 THE COURT: Okay.

15 MR. CLARKE: We rest.

16 THE COURT: Okay. So each of the movants have
17 rested. How many more witnesses do we have?

18 MR. HILLYER: That's what I was going to suggest is
19 if they're all done and we're done with this, maybe right now
20 is to take a short break and figure out, we may not have any
21 witnesses, and we may have a very short one. So that's what I
22 was trying to regroup.

23 THE COURT: Okay. Well, so my question is are you
24 asking for a short recess before lunch, or are you asking to
25 take a lunch and then come back and tell me if there's a

1 witness.

2 MR. HILLYER: Just take lunch.

3 MR. PULMAN: Excuse me. Short recess so I can know
4 whether I have to stay or not would be my preference. Very
5 short.

6 THE COURT: Okay. Well, we will take a five-minute
7 recess.

8 (Recess at 12:07 p.m./Reconvene at 12:16 p.m.)

9 THE COURT: We will go back on the record in Case
10 Number 22-31641. Mr. Langley?

11 MR. LANGLEY: Yes, Your Honor. On the Objector's
12 side, we have decided to release Mr. James Goodman. We think
13 his testimony would have been duplicitous of what you've
14 already heard. But we do have -- we were going to recall Scott
15 Seidel. And instead of doing so, we have agreed to a
16 stipulation with the Trustee, with the other parties
17 acknowledging it.

18 And that stipulation is that the Trustee, for the
19 first time, learned of the release of the DACA --

20 MR. RUKAVINA: Alleged release of the DACA.

21 MR. LANGLEY: -- alleged release of the DACA on the
22 3992 account, and that there was no investigation done related
23 to that release of the DACA.

24 MR. RUKAVINA: I think you meant to say that he
25 learned of that allegation for the first time today.

1 MR. LANGLEY: Yeah. Didn't I say that?

2 MR. RUKAVINA: No. So that's the stipulation, Your
3 Honor, yes, that the Trustee learned --

4 THE COURT: I've got to tell you, I have no idea what
5 you just said.

6 MR. RUKAVINA: Mr. Langley is asking for a
7 stipulation that we agree as follows: that until the testimony
8 of Mr. Bates today, the Trustee had not heard any allegation
9 that the DACA on the 3992 account had been released, and he did
10 not investigate that issue because he never heard of such a
11 potential release. Is that satisfactory?

12 MR. LANGLEY: That is.

13 THE COURT: So the Trustee never investigated it.

14 MR. LANGLEY: That's correct.

15 THE COURT: Thank you.

16 MR. LANGLEY: And with that, the Objectors don't
17 intend to call any more witnesses. And so we would close the
18 evidence and move to oral arguments after lunch.

19 THE COURT: All right. And how long -- so let's take
20 estimates for closing.

21 MR. RUKAVINA: Twenty minutes on my end, Your Honor.

22 MS. ARGEROPLOS: Max 20 minutes for me as well, Your
23 Honor.

24 MR. CLARKE: We'll aspire to 20, as well.

25 MR. LANGLEY: And I'll say 30 to 45 just because we

1 have to address three different arguments.

2 THE COURT: Fair enough. No. I'm not trying to cut
3 anyone off. I'm just trying to figure out about how long we
4 would have. So I'm going to multiply those for dog time. And,
5 ARRIS --

6 MR. MUENKER: I pride myself on my brevity, Your
7 Honor. I expect to be five or ten minutes.

8 THE COURT: All right.

9 MR. PULMAN: Your Honor, Randy Pulman on behalf of
10 James Goodman. May we be released?

11 THE COURT: Yes, you may.

12 MR. PULMAN: It's a pleasure being in front of you
13 the last couple of days. Good to see you, Judge.

14 THE COURT: Nice to see you, Mr. Pulman.

15 MR. PULMAN: Thank you.

16 THE COURT: So with those estimates, it looks like we
17 have lots of time for the afternoon. When would the parties
18 like to come back from lunch? I'll give you guys time to have
19 lunch.

20 MR. RUKAVINA: 1:30? 1:30, Your Honor.

21 THE COURT: 1:30? Okay.

22 MR. RUKAVINA: An hour and ten minutes is plenty.

23 THE COURT: That's fine. If that's okay with
24 everyone else, okay with me. The Court will stand in recess
25 until 1:30.

1 (Recess at 12:19 p.m./Reconvene at 1:31 p.m.)

2 THE COURT: Good afternoon. We can go back on the
3 record in Case Number 22-31641. Okay. And as I recall, prior
4 to lunch everyone rested. So we are prepared to begin closing
5 arguments. Have parties agreed upon the order of closing
6 arguments?

7 UNIDENTIFIED SPEAKER: Same order, same form.

8 THE COURT: Okay. Fair enough. Trustee want to
9 start, or go last?

10 MR. RUKAVINA: I think both, Your Honor.

11 THE COURT: Okay.

12 MR. RUKAVINA: But I will try to be brief. Did
13 Mr. Seidel -- there it is. He took my Bankruptcy Code --

14 THE COURT: How dare he.

15 MR. RUKAVINA: It even says Munsch Hardt on it.

16 THE COURT: Charge it to his expenses.

17 MR. RUKAVINA: Your Honor, thank you for hearing us
18 patiently these last couple of days. Again, as I said in
19 opening, I have no doubt that the Court has read all of the
20 papers. There's no need for me to repeat any of that.

21 So let's just get right to the 9019 factors. I think
22 some of them are very self-evident and don't require much
23 thinking. For example, the complexity, duration, and expense
24 of the litigation, that being the 542, the 544, the 548. These
25 are extremely sophisticated defendants with extremely

1 sophisticated counsel with limitless pockets. I like to think
2 that I'm fairly sophisticated, and Mr. Seidel is, as well. We
3 have empty pockets.

4 This is complex. These are, in two regards, matters
5 of first impression. The perfection issue, and we'll talk
6 about that in some detail, is a matter of first impression.
7 The fact that Prosperity put the \$4.4 million back, undid what
8 I think was clearly a fraudulent transfer, is a matter of first
9 impression. In other words, is the Court going to find that
10 Prosperity cured the fraudulent transfer such that there are no
11 damages. That's an issue under 550, as well.

12 Duration, this is going to go up on appeal. These
13 are matters that those -- well, the standard in any such
14 litigation, obviously, is a mixed question of fact and law.
15 The fact that there are these issues of law is going to mean a
16 de novo appeal. And there are at least four more judges that
17 would touch this matter.

18 And of course, expense. We're dealing with
19 expensive, excellent lawyers. And although we do not believe
20 that the Bondholders are over secured, no one knows whether
21 that might change or not.

22 For example, if the Court finds that, using very
23 round numbers, the \$10 million we're going to get from AMRR
24 hopefully soon with the second transaction that is in the
25 works, if the Court finds that that's their collateral, then

1 they could very well be back into an over secured position.
2 And we don't want to be paying Mr. Silverstein's rates just to
3 lose against him.

4 Your Honor, likewise I don't think there's any
5 question that these were arm's length negotiations. There's no
6 fraud or collusion. The Trustee might have had less than
7 perfect information because there were a couple documents that
8 he didn't have. But he had accurate information.

9 We trust Mr. Ruzinsky. We trust his colleague, I
10 apologize, that I cannot pronounce her last name. That is
11 something that I have felt that my whole life. So hopefully
12 she understands that I sympathize. And of course, Your Honor,
13 I don't think there's any question of good faith here. So
14 those factors are all easy.

15 It's really the two remaining factors, the
16 probability of success and the reasonable views of creditors
17 that are at issue here today. And if we were not having the
18 two largest unsecured creditors objecting, then this would be a
19 much easier 9019, I think.

20 Mr. Seidel, let me reiterate, does not relish
21 litigating with his creditors. We miss the good old days when
22 everyone was unified in this case. We hope we'll return to
23 that. Frankly, part of that is reminding everyone that, as you
24 said, Mr. Seidel is the sheriff. You may not agree with all
25 that he does, but -- and we respect their objection. But

1 someone has to make the proposal, the decision. And then, of
2 course, the Court is the final arbiter of that. And Mr. Seidel
3 has made his decision. And it is a wise decision.

4 I think to state the obvious which the Court
5 certainly knows, and hopefully the parties in this courtroom
6 are learning, Mr. Seidel and I are not afraid to litigate.
7 We've litigated many, many things, usually successfully.
8 Mr. Seidel is a premier trustee. He's not afraid to litigate.

9 But he's also not going to file a greenmail case
10 against another very large creditor just to try to get some
11 more juice out of them. He's not that kind of a trustee. He
12 doesn't shoot first and then just let God decide where the
13 bodies fall.

14 So when I look at filing a lawsuit on behalf of
15 Mr. Seidel, or on behalf of anyone, and I have filed many, many
16 lawsuits, I try to, as I think a reasonable lawyer should, try
17 to figure out how am I going to survive a motion to dismiss.
18 And more importantly here, how am I going to survive a motion
19 for summary judgment.

20 I think respectfully, there is no question that this
21 is property of the estate, the 4.4 million. It was property of
22 the debtor. As I said in opening, just as a matter of simple
23 logic, these funds have to belong to someone. We know that the
24 Bondholders didn't effectuate a foreclosure because there was a
25 switcheroo on them. Therefore, they're the debtors' funds.

1 And as I have always maintained, as you heard
2 Mr. Montgomery testify today, Genesis wasn't even in default.
3 Even if the underlying guarantee and assignment were valid,
4 which I don't think there's any question I could avoid those
5 like that if I wanted to, there was no default. They had no
6 right to take out the funds. The funds or a debt or a right of
7 restitution belong to the debtor. This is property of the
8 estate.

9 That then raises the next logical question in my mind
10 as I'm trying to anticipate a motion for summary judgment. The
11 UCC has a category for every type of asset out there. Every
12 type of asset out there falls within one of those buckets.

13 Here, the Bondholders have a perfected blanket lien
14 on everything with a few exceptions. They don't have a lien on
15 commercial tort claims. They don't have a lien on cash. And
16 they don't have a lien on deposit accounts, unless of course
17 they have DACAs.

18 So we have this \$4.4 million sitting in 0188 that's
19 property of the estate. It has to fall into some bucket under
20 the UCC. Right. It's not a commercial tort claim. I don't
21 know what it is. I don't know if it's a general intangible.
22 I'm not the expert, although I have the benefit of one of the
23 premier experts in the country on this.

24 And obviously, I'm not going to violate privileges
25 and open that can of worms up. But even if I am not qualified

1 to decide or opine on this, he is. And of course the Court and
2 superior courts would decide.

3 So is this a deposit account? Well, of course it's a
4 deposit account. But that's not the end of the question. It
5 is not a deposit account of the debtor. It is not a deposit
6 account in the debtors' name. That's the trigger under the
7 UCC. And this is now what I have to respond to in a motion for
8 summary judgment.

9 And I have to be -- and Mr. Seidel can only be
10 ethical and honest and talk to you with candor. Again, we're
11 fiduciaries, and he's your agent, if you will.

12 How do I respond to that MSJ? It is a deposit
13 account, but it is not in the name of the debtor. This was the
14 point of my questioning of Mr. Seidel. When you have an escrow
15 arrangement or a title company holding money, or me and my firm
16 holding money for the benefit of someone, or even the Court in
17 its registry holding money, those are all deposit accounts.

18 But from the perspective of the claimants, they're
19 not deposit accounts. This is why the Bondholders' argument
20 that this is a general intangible, I don't know if I can defeat
21 that argument. From the debtors' perspective, it appears to be
22 a right to funds, and that appears -- a refund of funds,
23 wrongfully taken, that appears to be some kind of general
24 intangible.

25 And again, Mr. Langley is going to get up here and

1 he's going to probably write my MSJ response for me. He's
2 going to say but it's a deposit account. But it's not a
3 deposit account in the name of the debtor. So I don't know how
4 we survive that.

5 That, in turn, suggests that well, maybe it is the
6 Bondholders' funds. And then we look at the equities. And we
7 begin with the obvious. If Prosperity hadn't done what it did,
8 if Mr. Bates hadn't swept the funds, we would not be here
9 today. I might be looking at a preference against the
10 Bondholders, although it's very hard to preference someone that
11 gets their collateral back.

12 But, but for that let's call it fortuitous adventure,
13 there would be no question that the Bondholders validly
14 exercised their rights and foreclosed on the funds. So is this
15 a windfall? Is this a forfeiture? Courts of equity abhor
16 windfalls. They abhor forfeitures.

17 And it's like I said during opening, when you have
18 heard nothing to the contrary, the Bondholders did nothing
19 wrong. Do I want their money? Hell, yeah. I specialize in
20 it. But they did nothing wrong.

21 Prosperity, it appears, did something wrong, although
22 inadvertently. That's the evidence. The Court can find that
23 credible or not. But it made it right afterwards. That's the
24 strongest thing here. Whether Mr. Bates really believed that
25 there was a release of the DACA or not, we can argue about

1 that. It doesn't matter. The Bank, as an institution, made it
2 right 14 days later, or 13 days later. Not a material period
3 of time.

4 So this is why Mr. Seidel, as he has testified,
5 believes that this is not a winning lawsuit because a court,
6 especially one of equity, dealing with innocent institutional
7 investors who did nothing wrong, a court is going to look for a
8 way to avoid a forfeiture. And a court, I believe, especially
9 at the Fifth Circuit, is going to look very closely at the
10 equities of the case.

11 And again, we mentioned it today, or yesterday
12 rather. And we said this is a dangerous hearing. And one of
13 those reasons is because we talked about 552(a) yesterday. No
14 one raised 552(a). But the Trustee certainly thought about it.

15 The Court, in other words, is not powerless. If the
16 Court feels that the equities of the case warrant it, the Court
17 can reverse 552(a) and apply a pre-petition lien to post-
18 petition property.

19 All of that, Your Honor, suggests that the perfection
20 issue needs to be compromised, and that it's compromised in an
21 appropriate way. The 97/3 split, it's a red herring. A
22 hundred percent of the money goes to the estate and goes to a
23 legitimate creditor that's owed at least \$4.4 million.

24 Now we look at the fraudulent transfer claims against
25 Prosperity. I mentioned in opening that we are aware of Your

1 Honor's opinion. We were not aware of it before. But it is no
2 matter that we may disagree with that opinion. We would start
3 548 behind the eight ball because there's no question that when
4 these transfers were made, the Bondholders were perfected. It
5 was their collateral.

6 I believe that you can 548 fully encumbered assets.
7 But that would be a motion to dismiss. And I would argue to
8 the very judge that wrote that opinion that she was wrong.
9 That's not an enviable task. And that's another issue that
10 would go up all the way, maybe all the way because that is an
11 important issue. It's one that we see in bankruptcy all the
12 time.

13 But even aside from that uncertainty in law, there's
14 the uncertainty in fact. Prosperity put the money back. In a
15 different account, okay, but they disclaimed it. They said
16 it's not ours. They undid the fraudulent transfer. There was
17 a fraudulent transfer for 13 days. I would have to avoid the
18 underlying assignment which, again, I think I can do in a
19 heartbeat, have to avoid the transfers.

20 But what am I avoiding when they put the money back?
21 It's a stinker of a claim on the 4.4 million. The \$540,000,
22 the 539, it's a lay-down. But for Your Honor's opinion, it's a
23 lay-down. And \$200,000 on that, it's, you know, it's a little
24 bit on the lower side. But it's in the context of the broader
25 settlement. It is a negotiate amount.

1 And as Mr. Seidel testified, it's an appropriate
2 compromise for risk, delay, and expense. If we were dealing
3 with \$5 million or \$10 million, it would cost me more or less
4 the same amount of money to avoid it as the \$539,000. It just
5 is not enough money in controversy to justify litigation
6 against a well-armed, well-funded bank that is going to defend
7 itself, especially because, let's state the obvious, there are
8 possibly reputational issues to be had here.

9 There's allegations that the Bank did something
10 wrong. The Bank is going to defend itself on that with
11 excellent lawyers. So at the end of the day, getting \$350,000,
12 it's not three percent. It's not getting a de minimis amount.
13 It's getting something that without the settlement, we could
14 very well not get at all.

15 There's more intangibles which is that we need to
16 move this case forward. So far, we filed a motion to settle
17 with Mr. John Goodman. The Bondholders objected. Again, we're
18 not doing their work. We've litigated with the bondholders.
19 We filed a motion to settle one of the subsidiary worker's comp
20 claims. The Bondholders objected. We worked it out.

21 We filed a 9019 with AMRR. Everyone objected other
22 than ARRIS. The Bondholders filed a lift stay motion and we
23 objected. So we're not doing their bidding, for one. But two,
24 we've got to stop this fratricide. We've got to move on with
25 this case.

1 That means that Mr. Seidel, unless he makes a
2 decision that is patently wrong, needs to be allowed to do his
3 job. As a result of this settlement, 4.2, or somewhere around
4 there, million dollars of debt is repaid. Finally, someone's
5 getting something out of this case. And the estate gets
6 \$350,000 of free and clear money that it desperately needs. It
7 might be the only free and clear money to fund this case
8 depending on how the Court adjudicates lien and asserted other
9 rights against other assets.

10 Unless the Court has any questions, Your Honor, I
11 really have nothing more to add.

12 THE COURT: I don't think I have any questions at
13 this time, Mr. Rukavina.

14 MR. RUKAVINA: Thank you.

15 THE COURT: I'll be sure to call you back up if I
16 have any other questions.

17 MR. RUKAVINA: Thank you.

18 THE COURT: Or if I want to hear my opinions
19 criticized any further. I'd say you hurt my feelings, but you
20 know better.

21 Mr. Clarke?

22 MR. CLARKE: Thank you. Brian Clarke for the record.

23 Your Honor, I'll try not to go back over things the
24 Trustee's hit on. But given the strength of Mr. Seidel's
25 testimony, the merits of the various legal arguments regarding

1 perfection and control that I'll go over, the testimony of
2 Mr. Montgomery, the testimony of Mr. Bates, and I think the
3 clear value of the collusion claims against the estate and
4 Prosperity that the Bondholders are releasing, as well as the
5 significant cost that the Trustee would need to incur to
6 litigate these claims, I think it's clear the settlement passes
7 any lowest range of reasonableness test by a significant
8 margin.

9 Before I summarize the legal arguments for why the
10 Bondholders would be entitled to these proceeds in any
11 litigation, I want to point out for the record that Mr. Seidel
12 testified to the great lengths he went to to find a firm to
13 prosecute these claims against Prosperity that the Objecting
14 Creditors are going to tell you were such slam dunks. And in
15 his deposition testimony and in the hearing yesterday, he
16 mentioned the following firm specifically as turning down the
17 opportunity to prosecute these claims on a contingency for the
18 benefit of the estate.

19 Munsch, Hardt, Passman & Jones, Quilling, Selander,
20 Brian Cade (phonetic), and Butler Snow.

21 THE COURT: Reed Smith.

22 MR. CLARKE: I'm sorry?

23 THE COURT: It's Reed Smith, not Brian Cade.

24 MR. RUKAVINA: He moved.

25 MR. CLARKE: Oh, he moved. Oh, well. Well because

1 Butler Snow also does trustee work, Mr. Seidel testified that
2 he asked Butler Snow to provide some recommendations.

3 THE COURT: Right.

4 MR. CLARKE: And his testimony was that Butler Snow's
5 response was, "Cricketts, nothing, zero, nada." Mr. Seidel also
6 described negotiations he had with the Objecting Creditors for
7 them to finance the prosecution of the claims against
8 Prosperity. And we looked at some emails on that. There was a
9 lot of back and forth on the negotiations.

10 And you know, the upshot was -- from Mr. Seidel's
11 testimony was that the Objecting Creditors wanted, "the lion's
12 share of any proceeds and were also unwilling to protect the
13 estate to make sure we have the same deal, or at least a good a
14 deal as we have right now which is \$350,000 coming into the
15 estate." Mr. Seidel's efforts to shop these claims or find
16 anybody who was willing to prosecute them I think tells the
17 Court essentially all that it needs to know about the value of
18 these claims from the estate's perspective.

19 Your Honor, in our June 2nd brief in support of the
20 settlement, we briefed a number of legal arguments for why in
21 any litigation between the Bondholders and the estate, the
22 Bondholders would recover the subject funds. And so I want to
23 summarize those for the record now. And I'll try not to just
24 read what's in the briefs.

25 First, we know the Trustee disputes this, we think

1 it's questionable that the estate holds any property interest
2 in the subject funds. And the reason for that is when the
3 Bondholders delivered a notice of exclusive control over
4 account 3992, the estate's control and rights to that account
5 were cut off. That's how the DACA works.

6 There's no evidence or suggestion that the notice of
7 exclusive control was invalid or improper, or should not have
8 been recognized by Prosperity. And if I might, could we just
9 pull up -- we might pull up a couple of exhibits. Will you
10 just pull up Exhibit 65?

11 And there was a suggestion today that the DACA was
12 terminated at some point. There's no evidence of that beyond
13 the suggestion that beyond the suggestion that Mr. Bates thinks
14 it was terminated. And I want to point out for the record, the
15 party with the real incentive to do this investigation and find
16 that evidence of termination is Prosperity. And it sounds like
17 they did a thorough one and came up empty.

18 Ms. Ross, Ms. LaManna, Mr. Wilkenson, are attending
19 this hearing, and I think can confirm what I'm about to say.
20 This DACA was never terminated. And what Exhibit 65 here shows
21 is that Prosperity I think knows that. I mean, what we have
22 here is the letter from Mr. Bates to the CFO of Genesis Network
23 saying, "If I would not have agreed to move on the debt
24 repayment on that Monday, the money collateral would have been
25 pulled from the account by the Bondholders following the notice

1 of control on that Tuesday. If there was no DACA, if the DACA
2 had been terminated, there would be no reason to honor the
3 notice of exclusive control."

4 And I think what we see here is they know that notice
5 of exclusive control was valid. They know the DACA was valid
6 and that the DACA was not terminated.

7 Going back to the estate's interest, had the funds
8 gone into the 3992 account after Prosperity reversed the
9 Genesis payoff, or any other debtor account for which the
10 Bondholders delivered notices of exclusive control, which I
11 believe for the Goodman accounts is all of them, the funds
12 would have immediately been swept to the collateral agent. So
13 Prosperity didn't do that.

14 For purposes of this settlement only, we've
15 stipulated to the fact that the estate has some interest in the
16 subject funds. But that stipulation would not be binding on
17 litigation. And we think on the facts, it's you know, we think
18 we have the better argument that the estate lost any residual
19 interest in the subject funds when the notice of exclusive
20 control was delivered.

21 The Objecting Creditors sort of brushed this aside
22 and said the Court should deny the settlement and have the
23 Bondholders sue Prosperity for breach of the DACA while the
24 estate sues Prosperity for the fraudulent transfer of funds in
25 which the estate and its unsecured creditors had no equitable

1 interest. They assumed that Prosperity will be generous enough
2 to pay damages twice in two separate litigations, and
3 essentially not mount any defense.

4 And the Objecting Creditors here ignore I think two
5 crucial facts. First, no creditor other than the Bondholders
6 was harmed by what occurred here because the subject funds were
7 Bondholder collateral. And I think Exhibit 65 is a clear
8 admission of that from Prosperity.

9 You know, if not for the shenanigans prior to the
10 delivery of the notice of exclusive control, the Bondholders
11 would have had the subject funds over a year ago. They never
12 would have been available to the estate's unsecured creditors,
13 and therefore do not belong as proceeds of the fraudulent
14 transfer claim.

15 I know Mr. Rukavina's mentioned your opinion on this
16 issue, but that's not an outlier. That's not the only one.
17 See, for example, Bear, Stearns v. Gredd, 275 B.R. 190 where
18 the Southern District of New York says, "The purpose of Section
19 548 also leads to the conclusion that creditors must actually
20 be harmed in order to avoid a fraudulent transfer under that
21 section."

22 The same would apply to any state law fraudulent
23 conveyance claim under Section 544. As I think everyone here
24 knows, the definition of asset under Texas Uniform Fraudulent
25 Transfer Act specifically excludes property to the extent that

1 it is encumbered by a valid lien.

2 And as Mr. Rukavina just pointed out, the Objecting
3 Creditors ignore that there's no longer a transfer to unwind.
4 And whether there was ever a transfer as that term is defined
5 under the Code I think is unclear, at best. Mr. Montgomery
6 testified that no cash ever left the bank. All this was done
7 by accounting entries to different Prosperity accounts.

8 But to the extent that anything was ever transferred
9 here, it's already been unwound. Prosperity reversed the pay
10 down of the Genesis loans by creating the 0188 legal hold
11 account and holding the subject funds as a custodian rather
12 than a transferee. Mr. Montgomery's testimony was that they're
13 waiting for a, "referee" to tell them what to do.

14 There is no fraudulent transfer for the Trustee to
15 recover from Prosperity or Genesis. And if the Objecting
16 Creditors really thought there was a slam dunk fraudulent
17 conveyance recovered here, all they had to do to take over
18 these claims was commit to Mr. Seidel that they would leave the
19 estate no worse off than it would be under this proposed
20 settlement, which I don't think is a high bar to clear.
21 Mr. Seidel said they refuse to do that.

22 And so we don't think the estate has any interest
23 left in the subject funds, or that there's a prospect of
24 duplicative claims. But to the extent the estate was found to
25 have an interest in the subject funds in litigation with the

1 Bondholders, there are a number of reasons why that interest is
2 subject to the Bondholders' perfected security interests.

3 First, we went over I think with each witness the
4 language of the deposit account control agreement which says
5 that the Bondholders have a lien on the deposit account, and
6 the proceeds thereof. That's our Exhibit 45, Section 5. And
7 if the Court views the movement of the subject funds from the
8 3992 account on August 15th as essentially a disposition of
9 collateral or some sort of transfer of collateral, the
10 collateral agent security interest continued.

11 And we think it attaches to the Prosperity 0188
12 account, one just under the language of our DACA. But two,
13 under 9-315, that is proceeds of our account. The collateral
14 agent never authorized the disposition of the funds as required
15 under 9-315(a)(1). In addition, we never authorized the pledge
16 of 3992 to secure loans of Genesis Networks.

17 And just under the clear language of the DACA, even
18 if that pledge is valid, that pledge is subordinate to the
19 collateral agent's lien. And so we think it's clear that
20 Prosperity is holding the subject funds in the 0188 account,
21 and that those accounts -- that is essentially proceeds of the
22 3992 account.

23 Mr. Rukavina just mentioned this argument, and that's
24 that, you know, the deposit account is not a deposit account of
25 the debtor. Whether Mr. Montgomery or the Bank call it a

1 deposit account is sort of irrelevant. It doesn't mean that
2 it's a UCC deposit account. And Mr. Montgomery and I discussed
3 all the ways in which it is not a UCC deposit account. There
4 is no one who can withdraw from it. There is no one who can
5 make a deposit to it.

6 He testified that he doesn't know if anyone's earning
7 interest. I can represent that I wish the Bondholders were
8 earning interest on it, but my understanding is they are not.
9 The estate does not maintain that account with Prosperity. And
10 so it just does not meet the UCC definition of a deposit
11 account. We think that's cut and dry.

12 And so it's a legal hold account. And to the extent
13 that the estate has an interest in that account, it's a payment
14 intangible or it's a general intangible. And under the UCC
15 perfection in a payment intangible is done through filing of a
16 financing statement. The financing statement's filed by the
17 collateral agent with respect to the bonds all cover payment
18 intangibles and general intangibles.

19 And all of our UCC statements in the original
20 indenture and collateral documents granting and perfecting
21 liens on general and payment intangibles are in evidence in
22 this case, and they are uncontroverted. And so if what the
23 state has is an interest in a general intangible or payment
24 intangible, that is subject to the Bondholders' lien.

25 If you do think, if Your Honor does think that the

1 0188 account is a debtor deposit account, and therefore
2 considers UCC control relevant for purposes of collateral agent
3 security interest in the 0188 account, we think the collateral
4 agent has control. There's a couple reasons for that.

5 First, on August 31st, 2022, Prosperity confirmed to
6 the collateral agent that the funds would be held in the 0188
7 account pending resolution of the conflicting instructions,
8 notices, and directions from the collateral agent and the
9 company. The Objecting Creditors point out that the debtor
10 didn't sign this letter and it's therefore not an authenticated
11 record for purposes of the UCC.

12 But I don't understand why there's any need for
13 Prosperity to get the debtor to sign the August 31st, 2022,
14 letter to evidence the collateral agent's control rights to
15 that account. The letter says that the account is to hold the
16 funds until the resolution of conflicting instructions from the
17 collateral agent and the company.

18 And those conflicting instructions, that I'm aware
19 of, were one, sweep those funds to the collateral agent
20 pursuant to the DACA and the notice of exclusive control. And
21 two, use the funds as contemplated in this pledge agreement and
22 in discussions with Mr. Bates and Mr. Goodman to satisfy an
23 obligation of Genesis Networks.

24 Mr. Montgomery testified he knows that latter
25 instruction was improper, and that's why they reversed the

1 transaction. He said, "My belief, and I think the Bank's
2 position, is that we were not authorized or should have done
3 that. And when we came to that conclusion with a broader
4 audience, we immediately reversed the transaction because we
5 felt like that was the right and correct thing to do."

6 And so the idea that Prosperity would need the debtor
7 to sign or acknowledge the August 31st letter under these
8 circumstances, you know, we think puts form over function to a
9 pretty absurd level and should be rejected.

10 Your Honor, we also think for control purposes that
11 the DACA that covers 3992 also covers 0188. And I'll go back
12 to this language again. "Prosperity recognizes in the DACA the
13 collateral agent's continuing security interest in the deposit
14 account and in all items deposited in the deposit account and
15 the proceeds thereof. They do this as part of a subordination
16 of any contractual or statutory right of offset, set off, or
17 lien that it may have regarding the funds in the deposit
18 account."

19 If Prosperity could simply move the funds from 3992
20 to another account, it would defeat the purpose of this
21 contractual subordination. And the DACA specifically bars this
22 by having Prosperity recognize that the collateral agent
23 maintains a lien over proceeds of the account and by
24 subordinating any Prosperity lien to the collateral agent's
25 lien.

1 And so to recap these four legal arguments for why
2 the collateral agent would retain the funds in any litigation
3 with the Trustee, first, the estate, you know, may no longer
4 have an interest in the subject funds. Second, if the funds
5 are considered a disposition of collateral, that disposition
6 was without consent under 9315. And you know, excuse me --
7 excuse me. And because the 0188 account is proceeds of the
8 3992 account.

9 Third, if the Court thinks the estate has some
10 property interest in the 0188 account in that interest as a
11 payment intangible, the collateral agent is perfected by his
12 UCC statement, same as a general intangible.

13 And four, alternatively, if the Court considers the
14 0188 account deposit account for purposes of the UCC, that is a
15 debtor deposit account, you know, we think there are a number
16 of reasons for why the collateral agent still has control over
17 that account. That includes the DACA language, and that
18 includes the Prosperity letter from August 31st.

19 We come now to collusion which is the fifth argument
20 for why the Bondholders are entitled to all the subject funds.
21 And the collusion provision under 9-332(b) we think is meant to
22 short circuit the entire analysis we just went through by
23 saying if a debtor in a bank colludes to deprive a secured
24 party, here the Bondholders, of their rights to funds in an
25 account, then any transfer of those funds is not free and clear

1 of the secured party's lien.

2 I think the Court knows our view there was collusion
3 here. And they heard the Objecting Creditors' pleas on
4 September 22nd that the Court deem evidence of collusion
5 irrelevant. And I want to make the point for the record that
6 the Bondholders did not seek collusion discovery from
7 Prosperity.

8 When these negotiations were had back in March, we
9 had indicia of collusion from the involuntary petition
10 discovery, we had a few emails, and we were content to leave it
11 at that. We didn't think at that point that it was a
12 coincidence that the funds moved from the account a few days
13 after UMB's counsel made contact with Prosperity, provided a
14 copy of the DACA, had discussions with them regarding notice
15 addresses and delivery of notices, and then the funds are gone
16 the day before the notice of exclusive controls delivered.

17 We didn't think that was a coincidence. But again,
18 we didn't see further discovery on it. Once all this evidence
19 was produced, we said this on the 22nd, but we think the
20 Objecting Creditors should have done the right thing and
21 withdrawn their objection.

22 And the Court can make its own determination as to
23 the strength of the evidence supporting the Bondholders'
24 collusion claims. I think the more important point is that not
25 only would Mr. Seidel have to win on all four of the legal

1 arguments for why the Bondholders are entitled to the subject
2 funds, and I think you just heard from Mr. Rukavina, pretty
3 confident they'd lose on the payment intangible argument.

4 He would also have to explain evidence of collusion.
5 In other words, he would have to argue that James Goodman and
6 Prosperity did not collude with one another, but instead acted
7 in good faith to use Goodman Networks funds from the 3992
8 account in violation of a binding DACA which Prosperity had
9 full knowledge of no later than August 10th, 2022, if not much
10 earlier if we're going to say, you know, there's no flag and
11 something slipped through the cracks in the merger or something
12 like that.

13 They had knowledge of it at least five days before
14 they acted, and then use those funds to pay off a debt incurred
15 by another James Goodman owned and controlled entity on which
16 James Goodman had personal liability. So he has to say that
17 all that was done in good faith, there was no collusion.

18 And Mr. Seidel is a very credible witness. He's a
19 good Trustee and he's got talented counsel. But we don't think
20 they can make that case with a straight face. I think the
21 Objecting Creditors know this which is why they fought so hard
22 to have any consideration of evidence of collusion excluded
23 from the hearing today.

24 And Your Honor's decision to reject the Objecting
25 Creditors' motion in limine seeking to prevent the Bondholders

1 from introducing evidence of collusion and other evidence we
2 think is obviously correct, and any suggestion that Your
3 Honor's decision on that constitutes grounds for an appeal of
4 an order approving this settlement is hard to take seriously.
5 But we have, unfortunately, heard that. We'll take that up at
6 the appropriate time, if necessary.

7 Just a few more minutes, Your Honor. But again, we
8 think the evidence before you overwhelmingly supports approval
9 of the settlement motion. Mr. Seidel's testimony was
10 compelling. It's very clear that he's considered this matter
11 carefully. And as to the subject funds, he's reasonably
12 concluded that the proposed settlement is far preferable and
13 fair and equitable for the estate than litigating with the
14 Bondholders and Prosperity.

15 And so the question is why did he conclude that,
16 right? And so Foster Mortgage tells us that in evaluating
17 whether a settlement is fair and equitable for the estate, the
18 Court should evaluate three factors, the first of which is the
19 probability of success in the litigation with due consideration
20 for uncertainty in fact and law.

21 And while lawyers don't like putting probabilities on
22 legal claims, the Foster Mortgage's Court -- the Foster
23 Mortgage Court's use of that term is important because it
24 suggests that the Trustee in the first instance, and then the
25 Court should have essentially a mathematical understanding of

1 the potential upsides and down sides of litigation.

2 And when we were before Your Honor on September 22nd
3 in connection with the pleadings regarding evidence of
4 collusion, we suggested that the existence of evidence of
5 collusion between the debtor and Prosperity combined with the
6 four legal arguments for why the Bondholders are otherwise
7 entitled to the subject funds makes the estate's probability of
8 success in litigation close to zero.

9 And respectfully, referring to the Trustee's chance
10 of litigation, their chance of success is close to zero, that
11 was not intended to be bluster or hyperbole. And I just want
12 to walk through that quickly.

13 The Objecting Creditors, you know, make a big point
14 in their briefs, and including the question of Mr. Seidel
15 yesterday of the close call statement that appeared in versions
16 of the settlement motion. And they asked him a few questions
17 about that including our wanting to take that language out.
18 And we'll say for the record, we wanted to take it out because
19 it makes no sense.

20 And we understand the Trustee not wanting to say its
21 prospects of litigation are essentially nil, but yesterday
22 Mr. Seidel acknowledges that he needs to run the table on all
23 of the factual and legal arguments. If he loses on any, all
24 the subject funds go to the Bondholders.

25 And so for sake of argument, to put it in terms of

1 probabilities which Foster Mortgage suggests that we do, let's
2 assume that each of the five issues is a close call or toss up,
3 or a 50/50. For the Trustee to win all five, if my math is
4 right, that's one out of two times one out of two times one out
5 of two times one out of two times one out of two, which I
6 believe equals one out of thirty-two, which implies a three
7 percent chance of total victory for the Trustee in litigation
8 with the Bondholders, in other words, right in line with the
9 split of the subject funds proposed in the settlement motion.

10 The Court can assign its own does to each of the
11 perfection arguments and the collusion argument. It sounds
12 like Mr. Seidel didn't love our proceeds argument. They maybe
13 like our general intangible and payment intangible argument a
14 little better. I think the Objecting Creditors think the
15 collusion argument is a good one for us. That's why they tried
16 to exclude it.

17 But the ultimate point is that the Trustee has to win
18 on all five. The Bondholders only have to win one. And when
19 you combine the fact that the likelihood of success in
20 litigation is extremely low, with the cost of litigation and
21 other factors bearing on the wisdom of the compromise,
22 including the key fact that the Bondholders were absolutely
23 blameless in what went on here, and have now had to wait over a
24 year to get this collateral back, we think that the Trustee's
25 decision to settle is appropriate.

1 Building out what I just pointed out about the
2 Bondholders being blameless, I just want to repeat something I
3 said earlier, and then I'll be done, and that's that the
4 estate's creditors never had any interest in these funds
5 because they are bondholder collateral. The Bondholders should
6 have had this cash a year ago. And to adopt the Objecting
7 Creditors' position again is to assume that Prosperity will pay
8 damages twice even though the unsecured creditors here have
9 suffered zero damages by what went on.

10 The only party with damages are the Bondholders.
11 Their damages have increased significantly due to the tactics
12 of the Objecting Creditors, and we reserve our rights on that
13 front. The Objecting Creditors are seeking a windfall to which
14 they are not entitled. The settlement motion should be
15 approved and the Court should reject the arguments of the
16 Objecting Creditors.

17 Thank you.

18 THE COURT: Thank you, Mr. Clarke.

19 MS. ARGEROPLOS: Thank you, Your Honor.

20 I'll say that Mr. Clarke had a lot of the same
21 arguments that I was about to say, so I'll try not to repeat
22 them. And instead, you know, I'll focus on something else.
23 The Objecting Creditors have argued that the Trustee should sue
24 Prosperity because they say that they believe that this is such
25 a slam dunk for the estate.

1 But Your Honor heard hours of testimony about how
2 offers were made, how money has been spent, a lot of attorney's
3 fees have been spent in negotiating those offers. And it seems
4 that the -- that FedEx and ARRIS are not confident in these
5 causes of action enough to spend, you know, probably less than
6 they've spent in attorneys fees at this point, to buy the
7 claims.

8 And I already thought the deal was heavily negotiated
9 just between the people on Your Honor's right side of the
10 court. Now I find out yesterday that there was even more. And
11 so if FedEx and ARRIS really believe that the likelihood of --
12 that the litigation of these merits -- of merits of these
13 causes of action would be a slam dunk, they should have just
14 bought the claims. It's a completely normal thing to do.

15 And the explanation as to why they didn't do it is
16 not -- is just kind of insufficient. I mean, there's evidence
17 as to that they won't do it, but not that they can't. They
18 could have brought a witness to testify as to why they can't if
19 they had some legal reason not to, that they couldn't. But it
20 was just, you know, the Trustee said he flew up to Memphis to
21 talk about it and they wouldn't engage.

22 It's clear that he has -- that the Trustee has been
23 looking for a way to make a deal that's economic to the estate.
24 The one that's in front of the Court today brings \$350,000 into
25 the estate. And he asked give me one more dollar. And after

1 all of that, the answer was just well, FedEx doesn't do that.

2 And really?

3 I mean, the only solution that FedEx and ARRIS have
4 to this very weird set of facts is for Prosperity to get sued
5 twice for the same four and a half million dollar transaction
6 that has already been unwound and that we've already promised
7 to give back. Is that a creditor's reasonable opinion when at
8 least five seasoned bankruptcy litigators won't take the case,
9 including these?

10 The objections of the majority of creditors, the
11 majority of unsecured creditors are very relevant. They are
12 noted. But they're absurd. The marketplace has spoken as to
13 the objectively reasonable opinions of creditors. This
14 settlement is the right result, and it's a wise choice on a
15 very peculiar set of facts, and it brings more money into the
16 estate than several of the very much explored alternatives.

17 And the Trustee testified yesterday about the close
18 call with respect to the Bondholders' five arguments. Yeah, I
19 mean, if you compound a 50 percent chance of success and you
20 get three percent, the Trustee clearly understood that. His
21 testimony showed that. He understood that the Bondholders have
22 a lien on all of the money or none of it. So the expected
23 value is three percent of 4.4 million, but it's either 4.4
24 million or it's zero.

25 This settlement is -- it only has to be and based on

1 the evidence, it clearly is within the range of reasonableness
2 for this case and for the parties' respective rights and their
3 positions. It can be at the lowest point in that range of
4 reasonableness. It just has to be within the range.

5 So we've got FedEx and ARRIS arguing that Prosperity
6 has zero defenses against this litigation. Well, we're here
7 defending it right now. We've been defending it for six
8 months. The Bank took funds on August 15th and the next day
9 they got a notice of control. And that's when the Bank's legal
10 department stepped in and had to evaluate what just happened.
11 And we heard testimony that it was -- the relationship was kind
12 of under one person's control until the notices of control were
13 delivered.

14 And so that evaluation, that analysis took 13, 14,
15 days by the Bank. They ended up reversing the transaction.
16 They put the money in a segregated account. And the analysis
17 was ongoing. The Bank needed to figure out what the right
18 thing to do was. The bankruptcy case hadn't been filed yet.
19 And then it was on filed -- then it was filed.

20 And so Prosperity isn't on trial today quite, but
21 it's just a really weird set of facts. And the Trustee's job
22 in this situation is not easy, but the unequivocal statement
23 that this is a slam dunk and Prosperity's got nothing in
24 defense is just not true. It's not a guaranteed cheap
25 litigation win for the estate. The evidence just doesn't

1 reflect that at all.

2 So the probability of success is really a moving
3 target at best in this case, and it's probably closer to three
4 percent. Given all of the efforts of the parties to figure out
5 how to unravel this dispute, how to unravel the debtors'
6 finances, the debtors' organization and all of its affiliates,
7 there's different theories under different Chapter V causes of
8 action under different and conflicting case law as to whether
9 the Bondholders' lien sticks or not, whether it was property of
10 the estate. And if we can't figure out if it's property of the
11 estate after six months, then we should probably settle this
12 case. And we're still arguing about that today.

13 This has been a really tough case for everyone, and
14 we haven't even really dug into the merits yet. We've settled
15 this case with the intent of avoiding a lot of the costs that
16 we've incurred up to now, but it's a ton of costs to the estate
17 that comes with a really high risk. And the Trustee's
18 testified we're not even sure if -- we're not sure what money
19 is in the estate after the 350 comes in. But there's work to
20 be done. Let's let the Trustee do his job.

21 This settlement is reasonable in terms of the
22 objective views of creditors and in terms of being fair and
23 reasonable. It's reasonable in terms of the other Jackson
24 Brewing factors, the probability of success on the merits and
25 the complexity and duration of the litigation and the Foster

1 Mortgage factors. And it should be approved. We should --
2 let's let the Trustee do his job and let's be done here.

3 THE COURT: Thank you very much, Ms. -- now you see,
4 Mr. Rukavina, I had it for a while, I know I did -- Argeroplos.

5 MS. ARGEROPLOS: Yeah, you guys have been doing
6 great, by the way.

7 (Laughter)

8 MS. ARGEROPLOS: Argeropols.

9 THE COURT: I like, Mr. Rukavina, hate to get names
10 wrong. My maiden name was von Senden, simple German name just
11 like it's spelled but I got every version that you get of a V
12 word, so.

13 (Laughter)

14 THE COURT: I can say Langley.

15 MR. LANGLEY: Good English name.

16 Good afternoon, Your Honor. And I will say with
17 this, this has not been a fun process for FedEx or ARRIS. This
18 has been an expensive process. We have no hope of recovery
19 unless this is denied. And this is a situation where we have
20 strong opinions about 9-332 applying.

21 And Foster advises that the reasonable and objective
22 views of creditors have to be considered. And Foster goes
23 further. It says it's never seen a case where you have that
24 many creditors, 95 percent there that support it -- or, excuse
25 me, oppose it, no creditors support it. And there is an offer

1 to take over the litigation, and the Trustee does not do so.
2 And in that situation, Foster denied the settlement as being
3 reasonable and equitable.

4 And I want to turn the Court to Exhibit 20 because I
5 think what is reasonable and objective, you've read our papers.
6 You know what we've been arguing. You know what the other
7 side's been arguing. But I want you to hear from the
8 Bondholders' counsel who's not here, the Bondholders' counsel
9 that's actually UCC experts, what they think is reasonable and
10 objective and their real concern about this transaction.

11 So Exhibit 20, it's an email from Michelle Ross to
12 Jessica Friedman [sic] at the Bank. And Michelle Ross is the
13 Bondholders' counsel. And Joel Mattson was copied on it at the
14 Bank, as well. I understand those are legal counsel at the
15 Bank. Also copied on it was Eric Schaffer and Kathleen
16 LaManna, which I believe are also the UCC experts for the
17 Bondholders.

18 In this email, it says, "Dear Jessica and Joel, thank
19 you for your letter earlier today," and this is August 31st so
20 this is response to the August 31st letter that the Bondholders
21 are asserting is an authenticated record, which we clearly
22 dispute and don't think that's a credible argument. But
23 they're responding to that letter.

24 "We have a few thoughts, most of which could be
25 addressed later. One point that we want to address today is

1 how the funds should be held quota you (phonetic) pending
2 resolution of the conflicting instructions, notices, and
3 directions with respect to the funds. We believe it is
4 appropriate for the funds to be held in and not distributed
5 from the original account number" and it gives the full account
6 and it's 3992.

7 "Subject to the terms of the DACA, we believe your
8 goal is to maintain the status quo pending such resolution.
9 Holding the funds in that account will serve to limit or
10 eliminate any argument that the transfers impair the rights of
11 U.S. Bank National Association and UMB Bank National
12 Association. We'd be pleased to discuss this in greater detail
13 next week. Appreciate that Monday is a holiday. Very Truly
14 Yours, Michelle and Eric."

15 I don't know how we are getting criticized for not
16 being reasonable and objective when the very UCC counsel that
17 the Bondholders have hired to handle this said that this is a
18 risk, this is something that could impair our rights and it's
19 something that every single commercial practitioner knows that
20 9-332 applies to deposit accounts. And it's because it came in
21 in the Revised Code.

22 9-332 is a unique provision, and deposit accounts are
23 unique collateral. Deposit accounts are not money. We all
24 know that. It doesn't hold money. It holds a claim to funds
25 that a deposit holder can go to the bank and ask for money to

1 be given. It's a claim, and that's what it's recognized under
2 the Commercial Code.

3 And so what 9-332 does -- excuse me, what 9-104 does
4 is that deposit accounts could only be made collateral and
5 perfected, it's both of those, when there is control. And we
6 don't dispute, although we heard testimony today that 3992
7 deposit account may have been released. I don't know what the
8 story on that is. That was unique testimony that I hadn't
9 heard. It hasn't been investigated. We don't know much about.
10 So clearly if that was released, that changes the dynamics of
11 this, but we won't go there. You heard the testimony just like
12 we did.

13 THE COURT: Right, there's no evidence that it was.

14 MR. LANGLEY: Right. And so what we heard from it is
15 the 3992 account is original collateral to the Bondholders. We
16 don't dispute that. What the 3992 account is not proceeds
17 collateral. And that's an important distinction because
18 proceeds collateral can flow, right, and that's what we see in
19 two cases cited by the opposition, the HHH Farms case and the
20 Tusa -- and I'm going to have to pull my notes out for this
21 one because I will mispronounce it otherwise. It's a Fifth
22 Circuit case, In re Tusa-Expo Holdings. I believe it's cited
23 in Prosperity's brief.

24 Both of those cases talk about not original
25 collateral but proceeds collateral. And in Tusa, I think it

1 was crop proceeds, and in HHH -- no, maybe I am reversed. HHH
2 Farms was crop proceeds and Tusa was accounts receivable. In
3 both of those situations, the collateral was liquidated, placed
4 into -- the funds were then -- the monies were then placed into
5 a deposit account so the lien -- the original collateral lien
6 was not on the deposit account, it was on those other things.
7 And the money that went into the account became funds held by
8 the Bank that was specifically subject to proceeds and 315,
9 9-315.

10 Distinct from that is there was no original
11 collateral in that deposit account. And what was at issue in
12 both of those cases was not whether the deposit account was
13 subject to a lien. It was whether the exchange collateral can
14 continue through in that deposit account. And in those
15 situations, that deposit account does become cash proceeds
16 related to the original collateral.

17 HHH Farms and Tusa do not apply to original
18 collateral in a deposit account, and that's not what those
19 cases were holding. And that's an important distinction is did
20 the bondholders have collateral and the funds in the deposit
21 account. The answer is no. You don't have collateral and
22 funds unless you have proceeds collateral from other collateral
23 that gets funneled into the account.

24 What they had was collateral in a deposit account,
25 and that's where these unique standards get into, 315 doesn't

1 apply, there is no such thing as proceeds collateral out of a
2 deposit account. What there is is in a deposit account you
3 have control over that account as the lienholder.

4 And that control can come in two forms. It can come
5 in absolute active control where the Bondholders say you have
6 to get our approval to move any money in and out of this
7 account and everybody knows what that means. That means the
8 Bondholders would have had to get notice and been asked to do
9 it. And if the Bank and the debtor had authorized a transfer
10 without their approval, that would have been collusion. That
11 would have been absolutely collusion if that was the case with
12 an active DACA. This is not an active DACA.

13 And I'll turn you to the DACA itself.

14 THE COURT: So your argument is if there was a
15 restriction requiring consent to a distribution and if that
16 consent was not given and the distribution made, that would
17 have been a default?

18 MR. LANGLEY: So, again, it's not a default. I think
19 we are going to agree that there is a default under the DACA
20 that the Bondholders have with the Bank. I don't think we're
21 saying that the Bank didn't act wrongful. I mean we allege
22 that this was constructively fraudulent in our brief. That was
23 filed before we had any documents from Prosperity.

24 I think the testimony we've heard raises real
25 concerns with the Bank, right, that we heard today that they

1 unilaterally swept this when they knew that potentially a
2 notice of exclusive control was coming. So that sounds like
3 there may be wrongful conduct that's damage to Bondholders. I
4 don't think we dispute that the Bondholders have a really
5 strong claim against the Bank. What we dispute, though, is
6 that there is a separate res (phonetic) just sitting there
7 waiting for everybody to come get.

8 What was in this state, and I get back to the passive
9 nature, what was sitting in this --

10 THE COURT: Oh, so let me stop you there, though.

11 MR. LANGLEY: Sure.

12 THE COURT: So you think that the Bondholders can sue
13 Prosperity for whether it is the giving of -- excuse me, the
14 taking of the original subordinate lien in violation of the
15 DACA or if it was for the sweep of the funds, you think that
16 the Bondholders could sue Prosperity outside of this court,
17 most likely, and get whatever they're going to get, probably
18 \$4.4 million, okay.

19 But then separately, in this case, the Trustee could
20 sue Prosperity for the \$4.4 million as property of the estate
21 and not as property of the estate, they could sue them and just
22 get it somehow because it was at one point property of the
23 estate?

24 MR. LANGLEY: So, yeah. So let me turn you, there's
25 a couple of ways to address that.

1 THE COURT: Okay.

2 MR. LANGLEY: Let me turn you to 9-401 first.

3 THE COURT: Okay.

4 MR. LANGLEY: And that deals with the situation we've
5 got here. It says an agreement between the debtor and a
6 secured party which prohibits a transfer of a debtors' right in
7 collateral or makes the transfer of default, does not prevent
8 the transfer from taking effect.

9 And so that's what we have here. We have a situation
10 where the Bondholders caused -- excuse me, where the Bank
11 caused money to be transferred out of a deposit account against
12 the subordination agreement that they testified they weren't
13 aware of. Whether that's accurate or not, we don't know. But
14 they transferred that money out of the deposit account. That
15 transfer occurred.

16 And it's that transfer occurring that triggers 9-332.
17 And I've heard a bunch of different arguments of how this
18 transfer didn't occur today. Oh, well, they put it back. Oh,
19 well, they did this over here. Oh, they did that. It's a
20 debtor account but not really. It's -- there's so many
21 arguments they've tried to throw at this Court, but we all know
22 a transfer occurred on August 15th.

23 And what 9-401 doesn't do is it doesn't remove
24 liability for that transfer that results in all the damages
25 that happens out of that. But what they can't get past is

1 9-332 is extremely restrictive. It's said to be the lowest bar
2 for any transaction in Article 9, meaning that if money leaves
3 the deposit account, there's two exceptions to it not applying.

4 And we've talked about collusion in extent. I'll get
5 to collusion in just a minute. But the other one is that it's
6 not -- that it is a transfer to the debtor. And the UCC 9-
7 332(b) has a lot of comments that are actually really helpful.
8 And while there isn't a whole lot of case support, I will cite
9 a couple of cases in just a moment.

10 I think the statute is clear on its face, and I'll
11 read it. "A transferee of funds from a deposit account takes
12 the funds free of a security interest in the deposit account
13 unless a transferee acts in collusion with a debtor in
14 violating the rights of the secured party."

15 We think this applies to voluntary, involuntary, and
16 any other type of transfer that can come out of it because a
17 transferee of funds is who the Bank was. And they have tried
18 to distinguish, hey, the money never left Prosperity, but
19 that's how deposit accounts work. They don't hold money.
20 There wasn't money at Prosperity. It was loaned out to
21 somebody else.

22 What we're talking about is a credit to a deposit
23 account. That transfer was made in the accounting records of
24 the Bank and, for all legal purposes, out of the deposit
25 account and to play off the Genesis loans. That's a transfer.

1 We all know it's a transfer. The Trustee's counsel just
2 admitted it was a fraudulent transfer for 13 days and then it
3 got put back.

4 So the question is how do we deal with a transfer
5 that goes out. Did it get put back? I haven't seen it come
6 back into the 392 account. Prosperity -- excuse me, the
7 Bondholders' counsel in that email we started out with said
8 they wanted it put back in the 392 account. Did Prosperity do
9 that? No. And today we heard why they didn't do that. They
10 wanted control. And why did they want control? Because they
11 were worried about these liens.

12 And we've heard testimony today that --

13 THE COURT: I think the testimony was it was a legal
14 hold.

15 MR. LANGLEY: It is a legal hold. That's correct.
16 But he also testified that they wanted control. That was where
17 he started out with. And we talked about the legal hold. That
18 was a document that was introduced by us, and it's a document
19 that says what is a legal hold. And there's only one thing you
20 can -- or two things you can put a legal hold on on that
21 document. And one of them was I think like some type of -- I
22 don't know, it was something that was inapplicable. And the
23 second was a demand deposit account.

24 So if you have a legal hold from the Bank's
25 perspective based on the procedures they used, it has to be on

1 a demand deposit account. And we've heard arguments that this
2 isn't a deposit account. We've heard from the Bank that it is.
3 The Trustee has now admitted it is. Everybody knows that
4 what's at the bank in the 0188 is a deposit account. And it's
5 a deposit account that received transfers, transfers from the
6 debtor to Prosperity Bank for the benefit of Genesis.

7 THE COURT: The transfer didn't come from the debtor
8 under your facts. The transfer came from the Genesis loan
9 unwinding. It didn't come from the debtors.

10 MR. LANGLEY: We agree with that. We absolutely
11 agree with that. We think the transfer left the deposit
12 account 392, went to the Bank, and then the Bank made a new
13 transfer to establish this 0188 account. That new transfer
14 didn't give rights to the Trustee, it didn't give rights to the
15 Bondholders, it didn't give rights to anybody but Prosperity
16 because we've heard that the Trustee's the sheriff in town but
17 we know that Prosperity was the sheriff of 0188. They had full
18 control. They had a legal hold. There was no one other than
19 Prosperity that controlled that account.

20 And control is essential. Again, remember under 104,
21 control is essential not just to having perfection. It's to
22 having a lien on that account. And so to have a lien on that
23 account, there has to be control. And there has to --
24 perfection, there has to be control. There is no control over
25 that account or we wouldn't be here fighting. The money would

1 have been put back as Bondholders' counsel requested the day
2 they received the 8/31 letter.

3 And so I think from a perspective of what we're
4 dealing with here, we think it's straightforward. We know that
5 there's complications because the fact patterns with the Bank
6 is really bad, and we think that's actually why there's a
7 really good 548 claim here. And we agree, this was property of
8 the estate when it was in the deposit account.

9 And we've heard about your opinion in, and I
10 apologize for it, the --

11 THE COURT: Essential Financial?

12 MR. LANGLEY: Essential Financial. And we think,
13 first of all, you didn't decide the case on that point. That
14 was made in passing. You ultimately decided they didn't have
15 perfected collateral, so there wasn't any reason to get there.

16 THE COURT: Correct, there was no perfected security
17 interest in that case.

18 MR. LANGLEY: Right. So we don't think it's
19 controlling, but we understand that you thought it was
20 influential. And so we want to address it and deal with it.

21 And so where -- does the estate have interest in
22 fully encumbered property? The answer is absolutely yes. And
23 under TUFTA, we understand there's a difference, right? TUFTA
24 has a difference. You have to have assets, and assets doesn't
25 include any lien'd up property. But in the Bankruptcy Code,

1 548 just says an interest in property of the debtor. And,
2 clearly, funds in a deposit account are interest in property of
3 the debtor.

4 And in all the cases that we've seen, the case you
5 dealt with was the sale of assets so there wasn't dealing with
6 a DACA. The case in Ramba was dealing with the sale of assets.
7 It wasn't dealing with a DACA. In fact, everything we've seen
8 is something that doesn't deal with a DACA that deals with this
9 principle that you identified in Essential Financial and that
10 Ramba identified on the preference side of things. And we just
11 don't think it applies in a situation where you have a passive
12 DACA.

13 And why is that? Because a passive DACA, the debtor
14 has full rights to pay anybody. And if we go look at the DACA,
15 it says -- they don't even have to have a good-faith reason for
16 the payment. They could have bought a Ferrari, they could have
17 bought me a plane ticket here, they could do whatever they
18 wanted to do.

19 It doesn't make the transfer right, and it doesn't
20 mean there's no liability for the transfer. But it does make
21 sense that the transfer occurs. And so there wasn't anything
22 prohibiting the transfer from occurring here. And we think
23 from this standpoint, 9-332 has to apply. And does the estate
24 have an interest? Absolutely has an interest. They could have
25 spent this money for whatever reason if they had had that money

1 available to them in the deposit account. So there --

2 THE COURT: Until the notice of exclusive control.

3 MR. LANGLEY: Until the notice of exclusive control.

4 We don't dispute that if a notice of exclusive control had come
5 before the August 15th transfer, there wouldn't be a case.

6 And, again, we think that there may be wrongful
7 conduct by the Bank when they swept this unilaterally. But
8 that doesn't stop a transfer from occurring, and it doesn't
9 change 9-332.

10 THE COURT: So you think that there's a possibility
11 that Prosperity would have to pay twice?

12 MR. LANGLEY: Absolutely.

13 THE COURT: Okay.

14 MR. LANGLEY: We don't even think it's a close call.

15 THE COURT: Okay.

16 MR. LANGLEY: We think at this point in time there is
17 a fraudulent transfer under 548. We also think that the Bank,
18 if they don't get the money -- which they won't under a
19 situation of 548 because under 551 and 552, -- it comes back in
20 free and clear. The Bank will have been damaged by the
21 conduct. We think that they may be able to prove some type of
22 fraud. The Bank injured the debtor and injured everybody
23 involved in this thing, including the Bondholders.

24 That's not before the Court today from a standpoint
25 of what you have to decide. You're deciding is this deal fair

1 and equitable to the unsecured creditors, to the estate. And
2 if we are right, and, again, the Bondholders, UCC counsel
3 admits that theirs is a real concern. If we are right, we have
4 a \$5-million recovery against Prosperity.

5 And I think we've been talking a lot about the 4.4
6 million, and the 4.4 million is obviously the bigger chunk.
7 But there is no dispute that the 539 needs to be paid. It is
8 -- we think it's unconscionable given the facts and what
9 Prosperity did and the fact that no value was given for this
10 assignment, no value was given for the payments that went to
11 pay off the Genesis debts. We think that that 539 is a slam
12 dunk.

13 We've heard no principle defense. The Trustee's
14 counsel in communications has stated there's no principle
15 defense. There are inconsistencies in the motions, and I kind
16 of would like to run you through the motions if Your Honor
17 will, and I understand we've got the current motion before us
18 but I think it's helpful to kind of see the history. And if I
19 may, I've got a demonstrative to show kind of the changes that
20 have come over time.

21 THE COURT: Thank you.

22 MR. LANGLEY: May I approach?

23 THE COURT: Of course.

24 MR. LANGLEY: There's two copies.

25 THE COURT: Thank you.

1 MR. LANGLEY: Do I keep my own copy? Yes.

2 So what we've done here is we've put on the left
3 column the material terms that were known in the original
4 motion. We put in the second column anything that changed, and
5 you see the changes in red. And then the second amended
6 motion, we've done the same thing from the first amended
7 motion.

8 And so let me run you a few of these -- through a few
9 of these things. What we've really been dealing with these
10 unsecured creditors in this situation where every time we come
11 out with something new we get a new argument thrown at us. The
12 Trustee asserts that he may avoid the Prosperity payments --
13 again, that's the 539 -- as constructively fraudulent transfers
14 because the debtor was not obligated to Prosperity, received no
15 reasonably equivalent value for the Prosperity payments and
16 because James Goodman caused the debtor to make the Prosperity
17 payments in order to benefit the Genesis borrowers and self.

18 It then continues in the next box, Prosperity
19 disputes these allegations, right. But at the same time that
20 this motion was filed on March 22nd, he was sending emails to
21 the Bondholders, and it's in the record that there is no
22 principle defense. I had calls with Prosperity, and they
23 couldn't even state it. There is no principle defense on the
24 539 or the fraudulent transfer at large, the whole five
25 million.

1 And then what do we see in the first amended motion?
2 After the Bond -- excuse me, I keep confusing all the three
3 parties. After the Trustee's been made aware of FedEx and
4 ARRIS are going to reject, they haven't yet as of the first
5 amended motion, he filed a new motion and says, Prosperity
6 disputes these allegations. Prosperity denies the Trustee's
7 claim asserting, among other things, good-faith transferee
8 defenses under Section 548 and 550 of the Bankruptcy Code.

9 Well, 548 and 550 have a "good faith for value"
10 defense. I think that's what they're citing, right? And we
11 question both of those. We don't think that the Bank, as the
12 testimony laid out today, has been acting in very good faith
13 related to anything related to Goodman Networks. There's a lot
14 of bad issues, a lot of bad facts for the Bank.

15 We also think even more importantly, and leave good
16 faith aside, there wasn't value. Prosperity received payments
17 from Goodman Networks when the debtor on their notes was
18 Genesis. And the only reason that that occurred was because
19 there was a relationship between the two companies that
20 involved the Goodmans. And so the Goodmans were using Goodman
21 Networks to pay the banks of Genesis Networks where there was
22 no value in that situation.

23 There is absolutely a fraudulent transfer claim that
24 should be avoided because no value was given to Goodman
25 Networks when they made those payments. They're within the

1 two-year period that you can lookback under 548. They're
2 within the four-year lookback that I think is Texas. Is that
3 right? Four-year lookback under TUFTA.

4 So we've got a situation where we think these are
5 easily recoverable under 548. The 539, and we don't have --
6 that's our lowest bar. If we went on the 539 and we lose on
7 the 4.4 because there's so many different complicated issues,
8 which we don't think are that complicated under 332, we still
9 have a low bar. 539. And right now, the consideration coming
10 into the estate is 200,000. And so I don't know how you get
11 past the fact that we've got a 539 claim that if we go and sue
12 on we can recover it. And you've heard FedEx and ARRIS say we
13 want to go recover that. We want to sue.

14 And you've heard -- you saw emails back and forth
15 between the Trustee, me, and other parties. You heard about
16 discussions offering of this and that. Those emails are not
17 flattering. This has not been a happy easy negotiation. And
18 essentially, we've been asked -- and when I say we, FedEx and
19 ARRIS -- to put the same money that the Bondholders were
20 willing to carve out of the money they were receiving.

21 So they were receiving \$4.4 million and carving out
22 of that money. They didn't put any money upfront. They
23 weren't paying any money to get this claim. They were carving
24 out money out of a bigger claim that they were paying back to
25 the Trustee so that he could come litigate this motion and

1 spend all that 150,000 litigating with any potential creditors.
2 And there's emails in the record from Paul Silverstein that
3 says we're giving you this 150,000 to fight with FedEx. That's
4 what it says.

5 MR. CLARKE: That's not what it says.

6 UNIDENTIFIED SPEAKER: That's not true.

7 MR. CLARKE: If it's in the record, then it can speak
8 for itself. But that's not what it says. I'm sorry for
9 speaking away from the microphone.

10 MR. SILVERSTEIN: And I never said that.

11 MR. LANGLEY: Let's pull it up.

12 THE COURT: Let's look at the email, I mean, assuming
13 it's an admitted exhibit. I thought I might have seen it as I
14 was flipping, but let's get to the accurate.

15 (Pause)

16 MR. LANGLEY: So I'll turn, it says Exhibit 68 from
17 FedEx. And if you look down, there's not paragraph indentions,
18 but on the right, you can see the breaks. It's the third
19 paragraph at the very end. It says, "Defending the settlement
20 from objections is assumed by us to be part of the agreed
21 carveout." And this email talks about how they're increasing
22 it from 100 to 150 to specifically deal with the FedEx and
23 ARRIS -- or it just says FedEx objections, calls our objection
24 meritless, and goes on a bunch of different directions.

25 I don't think that this is what the Trustee was

1 intending to it, but I have full certainty that Paul
2 Silverstein and the Bondholders intended that perspective. It
3 says so in this document. And I'll let the Court read it for
4 just a second.

5 (Pause)

6 THE COURT: Okay, I've read it. Thank you.

7 MR. LANGLEY: And so in the context of FedEx's
8 negotiations, this is the difficulty we were faced from the
9 get-go. This is May 9th. We hadn't even seen a single
10 document from Prosperity other than Genesis loan documents at
11 this time, and we were already subject to \$150,000 war chest to
12 fight our objection.

13 And I don't know how to characterize it any other
14 way, but I suspect that that 150,000 has been spent because I
15 can tell you FedEx and ARRIS has spent that much fighting this.
16 So when we're told we don't think this is valuable, when we
17 don't think that we're negotiating in good faith or have
18 offered anything, that's just not credible. We're here
19 fighting because we think there's real value to this claim.
20 And we think 9-332 is very clear, and it does deal with a
21 transfer that occurred here on August 15th before the notice of
22 exclusive control.

23 We think that this is, again, not a close call. I
24 hear the issue on the 0188 account and what it is. If we had
25 to figure out what that is, if this wasn't a transfer out of a

1 debtor account to Prosperity Bank, we would have to figure out
2 what that is. But it clearly isn't a deposit account at the
3 bank. The --

4 THE COURT: No, I was going to say I think their
5 primary -- I mean, excuse me, there's not a primary argument.
6 There's five total arguments, and I think that one of them is
7 that it's either a general or a payment intangible.

8 MR. LANGLEY: Yeah. And I will --

9 THE COURT: Because it's not a deposit account of the
10 debtor, as I understand the argument.

11 MR. LANGLEY: I understand that. And I want to be
12 clear. So when we talk about what assets are, so we look at
13 Prosperity Bank and say what assets are there, it's a deposit
14 account, right? It's holding that money. And the general
15 intangible definition explicitly excludes deposit accounts.
16 And you look at the 3PL case, and I confused it with 3PO and
17 all that, but there's a 3PL case that's cited.

18 And that case talks about a payment intangible that
19 existed. And what it talks about, it's a Colorado case, but
20 there's not many cases out there on this. It talks about how a
21 payment intangible is a right derived from a contract or tort
22 that is something that's tangible and can be transferred as a
23 chose [sic] of action. And that's not what we have here.

24 Here we have, again, a transfer that was free and
25 clear, nothing came back to the estate. That's why it's a

1 fraudulent transfer. If they had received reasonable
2 equivalent value, there wouldn't be a fraudulent transfer
3 claim. And we take great issue with the characterization of a
4 548 claim as being a general intangible. That's not what a 548
5 claim. It's not a general intangible. It is a tort claim that
6 arises only under the Bankruptcy Code.

7 And we don't think that there's any basis under any
8 precedent to say this is a general intangible when the issue,
9 the funds that are disputing over are held in a deposit
10 account, the general intangible definition specifically
11 excludes deposit accounts. And what the debtor has is a 548
12 cause of action. That's not a payment intangible. That's not
13 a general intangible. That's a cause of action that arises
14 under the Bankruptcy Code.

15 And maybe that's helpful for the Court to understand
16 is this case is involuntary. This case was commenced by the
17 Bondholders at the time they were in this dispute with
18 Prosperity. They commenced an involuntary case that gave rise
19 to the 548 action without getting the money back. They didn't
20 have to file the involuntary petition. They did. That's how
21 FedEx and ARRIS got here is because we're unsecured creditors.

22 If FedEx is successful on asserting that the money
23 that came into the 4352 account was the product of fraud and
24 embezzlement which we think we will do at some point in time
25 and you will hear that at some time down the road, but FedEx

1 was deprived \$81 million; 236 of that ended up in the four --
2 excuse me, in the 3992 account and ultimately was part of the
3 \$5 million that was transferred.

4 If FedEx is correct and that the entire \$81 million
5 or close to it was fraud, embezzlement, and stolen property,
6 the estate has no legal title because Texas Theft says it
7 remains property of the person that was stolen. And so if we
8 have title, that means our property has now flown through the
9 4353 account over to the 3992 account and been paid over to
10 Prosperity. So we do have an interest in whatever has gone
11 over to Prosperity even under the theory that --

12 MR. CLARKE: Your Honor, is this evidence or, or what
13 is this? There's no evidence on this.

14 THE COURT: Mr. Langley?

15 MR. LANGLEY: There is absolutely evidence. We put
16 into --

17 MR. CLARKE: In this hearing?

18 MR. LANGLEY: May I please?

19 MR. CLARKE: Go ahead.

20 MR. LANGLEY: We have put into evidence the 4352
21 account which Your Honor has heard testimony on yesterday. It
22 showed that an enormous amount of money was coming into that
23 4352 account at the same time that October 2021 period where
24 the assignment was made. We then saw enormous transfers go out
25 of the 4352 account into the 1838 operating account and were

1 used presumably to operate and do things at the business that
2 were probably unauthorized.

3 We also saw in the testimony that the 236 came out,
4 that that's -- do you have those --

5 THE COURT: I remember the walkthrough --

6 MR. LANGLEY: Okay.

7 THE COURT: -- of the bank statements of the money
8 coming in and out. And at one juncture, I think it was like
9 4325, those were FedEx monies that came in and then you walked
10 Mr. Bates through where the funds went. And then on cross,
11 Mr. Clarke challenged when the monies came in and out of
12 whether or not the monies that came in right around 9/1 or 9/2
13 and the monies that came out were the same \$5 million.

14 MR. LANGLEY: And, Your Honor, we're not asking for
15 you to make --

16 THE COURT: Am I wrong? Am I mischaracterizing or is
17 the argument different?

18 MR. CLARKE: That was correct. It was Mr. Seidel.

19 THE COURT: I apologize. Thank you. Thank you very
20 much.

21 MR. LANGLEY: So we're not arguing that in this
22 proceeding you should determine whether FedEx has some type of
23 property right, constructive trust, equitable title in that
24 property. We don't think that's appropriate. We're objecting
25 to a settlement simply saying this is a basis for why we're

1 objecting is we potentially think that the Trustee needs to
2 examine this issue and we need to figure out if there's a
3 resolution. And if we're right that 236 needs to be
4 investigated and it may need to be turned over to FedEx if
5 money is being turned over.

6 So I don't raise that as an issue other than this
7 settlement doesn't make sense if that's true. And so the
8 Trustee should have investigated that, resolved that with
9 FedEx, reached out to us and said, hey, we've investigated this
10 as source of funds, it's 236 from FedEx, and the other source
11 of funds we don't know where it came from is what the testimony
12 we heard. It came through a bunch of accounts, but we don't
13 know how it got into that original account a day before it made
14 its way to 3992.

15 And so we don't know if there are proceeds collateral
16 that would trump the situation of the Bondholders having their
17 original collateral in the 392 account. If we're correct, our
18 proceeds collateral, which is really proceeds of theft which
19 means we have legal title, actually would be controlling over
20 the Bondholders' original collateral in that deposit account.
21 And we don't know where that original 4.2079, whatever it was
22 that was in the Multiband account, we don't know where that
23 came from. Is there somebody else out there that has proceeds
24 to that? We need to have that investigated.

25 And that's where I think we get back to the factor of

1 Foster is, and really a fair and equitable settlement is was
2 there a reasonable and diligent investigation here. And we can
3 tell you with certainty that that's not the case. And how do
4 we know that's not the case? If we turn back to my
5 demonstrative on the third page, we go down to the last line
6 there which is a big line, and go over to the second column, it
7 says, "The Trustee after thorough review has agreed that the
8 collateral agent holds a valid perfected first priority
9 security interest in the subject funds as part of the overall
10 consideration for the proposed settlement."

11 And that's -- the first part, "The Trustee after
12 thorough review, "is really important. How do we know they
13 didn't do a thorough review? Because we know they didn't have
14 the documents until July 5th. When was this amended motion
15 filed? On May 17th.

16 THE COURT: I completely understand, Mr. Langley,
17 FedEx and ARRIS' arguments over the course of time. But at
18 some point we have to get to today. And so I guess the
19 question that I would ask you is do you dispute today, not
20 beginning in March or beginning in May at which time the
21 settlement may have been much less likely to have been
22 approved, but today do you believe that the Trustee hasn't done
23 the appropriate investigation?

24 MR. LANGLEY: So we don't. And part of the reason is
25 what we just talked about, the original source of funds. Where

1 was that original source of funds? We know that there was an
2 enormous amount of money from FedEx being taken and used to do
3 all sorts of things. We can show very clearly it was
4 transferred to AMR and others parties. We don't know if that
5 4.5, where that came from. And if it's the source of another
6 fraudulent transfer or some type of other issue that this comes
7 up.

8 The Trustee testified over and over again we need to
9 go after the bad guys, we need to go after the bad guys. and
10 we agree, and we're supportive. And what didn't come out is
11 the meeting with FedEx was not about Prosperity and this
12 settlement. It was about trying to figure out how to go after
13 the bad guys. We had an agenda set out, and we specifically
14 excluded Prosperity from that agenda. But we couldn't get the
15 Trustee and Trustee's counsel to move past that.

16 And I don't want to get into all the back and forth
17 that's there. But I can tell you FedEx wants these things
18 pursued and wants recoveries in this case and is acting to try
19 to maximize its value. And we have grave concern when the net
20 benefit here is \$38,000 to the estate and it's all going to pay
21 administrative expenses. And that's where I think, again, we
22 turn back to Foster and say there is nothing going to benefit
23 FedEx and ARRIS from this settlement. There's zero benefit
24 here for the unsecured creditors other than us.

25 And so that's where Foster is important. It says in

1 those situations, and that's not a lot of situations, but in
2 those situations, you have to give deference to the Objecting
3 Creditors who are receiving nothing out of this. There was no
4 benefit to the estate. And --

5 THE COURT: Does Foster require a deference to the
6 creditors or does Foster require that I give the Objecting
7 Creditors due and fair consideration?

8 It says the bankruptcy court must consider the
9 paramount interest of creditors. In that case, the Fifth
10 Circuit found that the trial court had made no reference, no
11 findings as to creditor opposition and that the judge had
12 failed to consider what in that case, and I'm using obviously
13 the Fifth Circuit's words, was nearly unanimous creditor
14 opposition to the settlement between what they considered to be
15 a parent and a child.

16 And so I think that -- I understand and not only am I
17 giving due deference to the creditors' opposition, but the
18 question is, is it the only -- is it a fact of it's either yay
19 or nay. I think at the end of the day, the Court has to give
20 consideration to the Objecting Creditors, but I don't believe
21 that if unsecured creditors say no, thus, the answer is no.

22 MR. LANGLEY: So what the Foster case says, and it
23 cites what it calls the famous test offered by the Eighth
24 Circuit in Drexel v. Loomis. And it says, The paramount
25 interest of creditors with proper deference to their reasonable

1 views. And it goes on, it says, This suggests a bankruptcy
2 court may not ignore creditors' overwhelming opposition to a
3 settlement. We believe a bankruptcy court should consider the
4 amount of creditor support for a compromise settlement as a
5 factor bearing on the wisdom of the compromise as a way to show
6 deference to the reasonable views of creditors.

7 So we do think that you've got to essentially find
8 that -- not that there's a good argument or that it's a close
9 call or this is a matter of first impression that likely falls
10 towards the Bondholders. We actually think you have to find
11 with certainty that under the UCC, this lien was not stripped,
12 that there is a lien on the 0188 account and we don't think you
13 can do that under 9-332. We think if it was approved without -
14 - against our deference, we would have a clear error there to
15 say that 9-332 applied, there is no lien here. It's a dispute
16 that needs to be tried.

17 And really what we heard from a testimony standpoint
18 I think is actually helpful to the Trustee and everybody
19 involved here, I think we heard Prosperity say they'll give the
20 money over if this Court will just tell them to give the money
21 over, which raises questions why are we here on a settlement if
22 they'll just give the money over and let us fight over it. I
23 don't understand what we're here fighting about.

24 THE COURT: I think they might be here fighting about
25 the fact that you have told me that they could be sued for \$8.8

1 million instead of 4.4

2 MR. LANGLEY: That's exactly why they're here.

3 THE COURT: Okay.

4 MR. LANGLEY: They want the release. So they don't
5 want to give up control of the funds until they get that
6 release because it is a potential double hit on them. They
7 have to pay for a 548 and they have to pay for whatever damages
8 the estate recovery is to the Bondholders. That's why they
9 won't release the funds.

10 If they have control, and they do, they could pay
11 this over right now and let us fight over what to do with those
12 funds but they haven't done so, right. They have maintained
13 control throughout this whole process and haven't given any
14 right. We heard this is treated like an interpleader. It's
15 not an interpleader. It's in a deposit account in Prosperity
16 Bank with a legal hold.

17 THE COURT: But is it a deposit account -- again, I
18 think we're skipping a step because, for example, if you make a
19 loan to me, okay, in your hands, that's accounts receivable,
20 okay. And so what your lender may have a security interest in
21 for you may touch your accounts receivable. As to me, it's not
22 an accounts receivable. It's something completely different.
23 And whether or not my lender is going to attach their security
24 interest to what I received from you depends on what account I
25 put it in, it depends on what form it make take.

1 And so I guess the question is if it's a deposit
2 account, is it a deposit account of the debtor?

3 MR. LANGLEY: It is not a deposit account of the
4 debtor because what you look to from a deposit account is who
5 the titleholder of that account is.

6 THE COURT: Okay. And so if it's not a deposit
7 account as to the debtor, then what is it as to the debtor?

8 MR. LANGLEY: We simply think it's irrelevant.

9 THE COURT: So it's irrelevant? Then how is the
10 estate reaching it?

11 MR. LANGLEY: It's not. We think there's a \$5
12 million claim here that is a liability to Prosperity Bank, and
13 that \$5 million claim is what needs to be pursued. Whether
14 they use the 4 million --

15 THE COURT: So it's a cause of action?

16 MR. LANGLEY: It's a cause of action under 548.

17 THE COURT: Okay.

18 MR. LANGLEY: And I think that's where we've lost
19 track of this piece of litigation and the settlement and lost
20 the road is we've identified a specific res (phonetic) that we
21 think should be paid and that's sophisticated by Prosperity,
22 right. They have \$5 million in liability on the transfers.
23 They set aside 4.4 million related to the most obvious
24 fraudulent transfer and have said, hey, y'all go figure out how
25 to split it as long as y'all give us a release.

1 And maybe you don't like that characterization, but
2 that's essentially what we're being asked to is fight over this
3 \$4.4 million when really we have, the estate has a \$5 million
4 claim that should be paid and, if there are damages to the
5 Bondholders, they have a claim that should be paid. It's not
6 limited to 4.4 million. That's a red herring. We're chasing
7 something that doesn't exist.

8 If there is a lien on that money today, we agree with
9 you that would become relevant. But because there is no lien
10 because of 9-332, it's not relevant. It's just --

11 THE COURT: Do you have any authority for me --

12 MR. LANGLEY: I do. I have --

13 THE COURT: -- that -- no, no.

14 MR. LANGLEY: I'm sorry.

15 THE COURT: I probably should tell you what the issue
16 is. Do you have any authority for me that would show that a
17 transferee should return the funds essentially to the estate
18 and separately return the funds to a lender that was defrauded?
19 And I'm using defrauded in the loosest sense possible, that
20 essentially when two wrongs were committed in your estimation,
21 one of fraudulent transfer and one I assume to be some
22 different kind of fraudulent transfer as to the Bondholders.

23 Do you have any authority that that transferee should
24 return that money twice?

25 MR. LANGLEY: So if you look at 550 of the Bankruptcy

1 Code, a fraudulent transferee can return collateral that was
2 transferred fraudulently, right. If this was equipment, you'd
3 go get the equipment, right. But with funds in a deposit
4 account, again, like you said, it's not money sitting there,
5 right. There's no money that we can go and possess and get
6 back. It's funds. It's an accounting entry, as everybody
7 admitted in this case.

8 And so what -- how do we go get that money back? And
9 before I start rambling, I need to ask you to repeat your
10 question.

11 THE COURT: No, no, no. I mean so let's look at 550.

12 MR. LANGLEY: Yeah.

13 THE COURT: 550(d) says the Trustee is entitled to a
14 single satisfaction.

15 MR. LANGLEY: Correct.

16 THE COURT: Okay. So I think your argument has to be
17 that the Trustee would be entitled to a single satisfaction but
18 separately, the Bondholders have their own cause of action,
19 okay --

20 MR. LANGLEY: Yeah.

21 THE COURT: -- because they were damaged to the tune
22 of \$4.4 million and that -- again, the bottom line is the
23 argument you said that Prosperity should be held to pay \$8.8
24 million. That is in the realm of possibility. Where is my
25 authority for that?

1 MR. LANGLEY: So I think the authority is this, that
2 there is liability to the estate under 548. Whether that comes
3 from an account that they've set aside as a reserve, like banks
4 often do, they often reserve internally money to be paid out
5 for potential litigation, for potential loan losses, all those
6 type of things. That doesn't cause it to be a discreet asset
7 that can be recovered by a 548 action.

8 So under our situation here, we don't think there's
9 anything to go get. We think there's a judgment to be had and
10 liability on that judgment and that that judgment should be
11 satisfied with money out of the general coffers of Prosperity
12 Bank. And if the Bondholders want to go argue about the 4.4
13 and do some type of argument over in state court that that
14 somehow is still subject to their lien, let them go do it.
15 We're not a party to that.

16 THE COURT: I am following you, Mr. Langley, with
17 respect to the 537, okay. I really am from the standpoint of
18 that seems to be, for lack of a better word, low-hanging fruit,
19 okay. Now whether or not the Trustee wants to go -- excuse me,
20 whether the Trustee wants to settle it and essentially subtract
21 in his mind the cost of litigation and/or appeals, there is a
22 cost of litigation. Even if you win, there's a cost to it,
23 okay, and there's a cost to your estate and to your client's
24 pocketbooks.

25 But I am at a loss for how two parties can get that

1 same \$4.4 million because I get that the money in the account
2 belonged to the debtor before it was swept and so the Trustee
3 could go after it then. But it seems like whether they get
4 third-partied in or whether they file their own action, it's
5 the same money. They're going to say that was my lien, okay.
6 What is the lien worth if not \$4.4 million?

7 MR. LANGLEY: So we don't think the lien has any
8 value today because the Prosperity 392 account has been swept.
9 They got I think about \$400,000 out of that account, so that
10 the satisfied the lien on the deposit account.

11 THE COURT: Swept under what authority?

12 MR. LANGLEY: Under the notice of exclusive control,
13 the Bank paid over the money that was remaining in the 3992
14 accounts.

15 MR. RUKAVINA: Your Honor has not heard that, but it
16 is true. There was some \$200,000 remaining.

17 THE COURT: Okay. But what about the money that was
18 improperly swept the day before?

19 MR. LANGLEY: So, again, that's where the transfer is
20 treated free and clear so they don't have an interest in that
21 at this point in time. They have to pursue legal recourse if
22 they can identify a breach. I don't actually think that the
23 DACA was breached from that perspective because --

24 THE COURT: How is the DACA not breached if the --
25 two things, okay. It was breached because the Bank thought it

1 had a pledge of that collateral.

2 MR. LANGLEY: I agree with that --

3 THE COURT: Did it?

4 MR. LANGLEY: I agree with that breach.

5 THE COURT: Did it have a pledge of collateral?

6 Because there was a contract that said they couldn't take a
7 pledge of that collateral, so that's number one.

8 And then, number two, they breached it because
9 somebody thought Genesis was in default but Prosperity's
10 witness now tells me, to quote Mr. Rukavina, whoopsie, they
11 weren't in default, okay. And so we should not have done that,
12 I think was Mr. Montgomery's testimony. I won't try to put an
13 improper or anything else word in his mouth, okay.

14 And then, number three, it was obviously done at a
15 time when they knew the exclusive notice was coming. Now
16 granted, maybe it's a "first in time, first to act," but you
17 have to be first in time and first to act with right.

18 Are you telling me that the UCC would be to step in
19 the middle and say it doesn't matter if it's fair or not, it
20 doesn't matter if it was fraudulent or not, it doesn't matter
21 if you had a right to it or not. A transfer took place.

22 MR. LANGLEY: Yes, Your Honor.

23 And I have a co-provision I think is helpful.

24 THE COURT: Okay.

25 MR. LANGLEY: And it's UCC Code 9-332(c).

1 THE COURT: I've got it up.

2 MR. LANGLEY: You've got it up. Do you have the
3 official comments there?

4 THE COURT: I will. I'll pull it up. Just one
5 second. I'll pull it up.

6 (Pause)

7 THE COURT: Yes, sir. I'm with you.

8 MR. LANGLEY: Okay. So at Official Comment 5,
9 there's an example 3, and it talks about transferees who do not
10 take free. And it gives an example, and it says that this is a
11 really oddball situation, but it gives an example. It says the
12 facts are in example 2.

13 But in wrongfully moving funds from the deposit
14 account at Bank A to the debtors' deposit account with Bank B,
15 debtor acts in collusion with Bank B. Bank B does not take the
16 funds free and clear of the security interest under this
17 section, so 332(b) wouldn't apply because there's collusion.

18 If debtors grants a security interest to Bank B,
19 Section 9-327 governs the relative priorities of lender and
20 Bank B. Under Section 9-327-2, Bank B's security interest in
21 the Bank B deposit account is senior to lender's security
22 interest in the deposit account as proceeds.

23 However Bank B's security interest does not protect
24 Bank B against liability to the lender that might arise for the
25 bank's wrongful conduct. That's what we have here without the

1 collusion. But even if we did have collusion, the situation's
2 exactly the same. The Bank took this money and put it in their
3 own deposit account and maintained a lien and we saw evidence
4 today that they treat it as their cash collateral. And how did
5 they do that? They had an assignment. They had an assignment
6 that gave them rights to --

7 MS. ARGEROPLOS: Judge, I'm going to object. This
8 misrepresents the evidence again. We didn't assert a lien in
9 the funds in the 0188 accounts. There's no evidence of that.

10 THE COURT: Let's let him make his argument.

11 MS. ARGEROPLOS: All right.

12 THE COURT: Thank you, Ms. Argeroplos.

13 MR. LANGLEY: Your Honor, the assignment specifically
14 says that they can have a replacement lien on a deposit account
15 at their own place, and we saw through emails and we can go
16 through those emails again where Bater Bates and Mr. Montgomery
17 both testified that this is our cash collateral. We won't turn
18 it over because it's our cash collateral. We won't release it
19 until we get paid on the Genesis loans. They held control.
20 They were holding it as their cash collateral. That's what the
21 documents say.

22 Now they've tried to say they disclaim that, but
23 again we can turn back to the motions, and I think the motions
24 are helpful in this point.

25 THE COURT: And before we turn back to different

1 exhibits, on this example 3, who is Bank B?

2 MR. LANGLEY: So the debtor maintains a deposit
3 account with Bank A. The deposit account is subject to a
4 preferred security interest in lender. At Bank B's suggestion,
5 debtor moves the funds from the account at Bank A to debtor's
6 deposit account with Bank B. That would bring it into the
7 security interest so that Bank B is a colluding bank that has
8 pulled out of deposit account A at another bank to pull it into
9 their deposit account and be subject to their security
10 interest.

11 The UCC 9-332 says that -- and 9-327 says that that
12 colluding bank's security interest is still superior to the
13 lender's because of the finality rule.

14 THE COURT: And I appreciate that, and I will
15 certainly engage with this in my decision. My question for you
16 is if this example is the example at which I am to glean your
17 argument, who is Bank B that is going to be superior to the
18 rights of the lender here? Is it Prosperity --

19 MR. LANGLEY: It is --

20 THE COURT: -- because Prosperity swept and kept?

21 MR. LANGLEY: That's correct.

22 So it's the transferee. Here, the transferee wasn't
23 Bank A. The transferee was the debtors' account -- or, excuse
24 me, not transferee. The transfer came from the debtors'
25 account, so the debtors' account would be Bank A. And Bank B

1 is Prosperity. There was a transfer. We don't think collusion
2 is met because it was unilaterally done by the Bank was the
3 testimony today. But even if there was collusion, that account
4 would be held by Prosperity as their security. And it would be
5 superior to the lender's.

6 And it's a weird result. I agree with Your Honor it
7 doesn't seem equitable, it doesn't seem right in a lot of
8 situations. But what it says is there is recourse to the
9 lender, right. That's what we're talking about. There is
10 recourse in this situation. They get to sue Bank B. And
11 that's exactly what --

12 THE COURT: But Bank B has disclaimed any interest in
13 the funds.

14 MR. LANGLEY: And that's where --

15 THE COURT: And I guess the argument is it's the UCC
16 and it doesn't matter if they disclaim it. It's all about how
17 the UCC works.

18 MR. LANGLEY: It is and --

19 THE COURT: Okay.

20 MR. LANGLEY: -- we dispute the disclaimer. And let
21 me show you in the motion, turning to Page 2 --

22 THE COURT: No, I understood the way you took me
23 through the evidence with the emails and the variations of the
24 motions. But I'm willing to be taken through it, no worries.

25 MR. LANGLEY: Yeah, I'm going to give you another

1 example, and it's Page 2 of my demonstrative in the second row.
2 It says, "As of the petition date, the subject funds remained
3 in the escrow account subject to the claims of Trustee,
4 Prosperity, and the collateral agent, and further subject to
5 the automatic stay."

6 And so this was on March 22nd which was about less
7 than two weeks after they said they were going to motion the
8 Court to get the cash collateral. They're saying that this
9 settlement is still subject to the claim -- excuse me, this
10 account -- they called it an escrow account, it's not -- this
11 account is still subject to the claims of Trustee, Prosperity,
12 and the collateral agent.

13 So clearly, there was a dispute over who got this.
14 Prosperity maintained control. They still maintain control
15 today. And we just don't find credibility, and you shouldn't
16 find credibility in the idea that they're disclaiming that. If
17 they're disclaiming that, why are they getting a release? That
18 alone makes this settlement unfair and unreasonable because
19 they're essentially disclaim something they don't have an
20 interest in and yet they're still taking consideration out of
21 this deal.

22 And so I think there's real concerns here on
23 Prosperity's -- I'm not -- let me be clear. I think there is
24 real concerns in what we heard from Bater Bates today. I think
25 you heard that and had concerns with that, too. I think

1 there's real concerns with what Mr. Montgomery said that he has
2 had an email that said that this is our cash collateral, we're
3 going to motion for the Court to give it back to us and satisfy
4 our loans, and now he's disclaiming that.

5 I think you heard them in their pleading that
6 Mr. Hillyer said in their reply that James Goodman authorized
7 this. But we heard testimony today that that wasn't the case.
8 They swept this unilaterally. So there are a number of
9 statements that have been made by Prosperity, including that
10 this is an escrow account subject to all these things, that
11 just aren't credible. And I don't like to sit here and say
12 that a bank is not credible, but I think they're trying to
13 avoid double liability. And I think they have always asserted
14 control over the 0188 accounts. Otherwise, we wouldn't be here
15 because they would have given the money to somebody.

16 And they could have interpled it if they really
17 believed that and for lease control, but they didn't do that
18 either. And if they had interpled it, they would have had to
19 assert in writing whether they stated a claim to it because
20 that's what's required when you interplead, right.

21 Now they're sitting back under a settlement saying
22 we'll do whatever the Court says as long as you approve our
23 settlement. And that's a really awkward place to be and an
24 awkward place to put the Court in is say approve this
25 settlement and we'll give money to somebody. But if you don't

1 approve the settlement, we're going to keep holding on to it.

2 If they really are disclaiming the money, let's
3 figure out how to get it to the estate, figure out how to split
4 it up on a lien dispute under a plenary matter, not under a
5 summary 9019 motion. Let's have a plenary dispute over liens.
6 That's what we're doing in AMRR. We've got disputes that FedEx
7 is going to get challenged on its fraud and constructive trust
8 issues, bondholders are going to get challenged on their
9 security issues. We're going to have a plenary hearing at some
10 point or we're going to have a settlement. We're already
11 talking settlement. I won't get into the details.

12 THE COURT: Please don't.

13 MR. LANGLEY: But we hope to not bring that back to
14 the Court.

15 (Laughter)

16 MR. LANGLEY: We're hoping not to bring that back to
17 the Court. But until we get this issue resolved and Prosperity
18 out of the picture either sued or their money in, we need to
19 figure out what to do. And right now, we just don't think the
20 posture of a 9019 is the right place to resolve a really
21 complicated lien dispute if this Court were to go and find that
22 0188 is some type of interest that can be lienied up, which we
23 don't think it is.

24 And, again, the examples we gave you in 9-332, are
25 really odd situations under the UCC. We acknowledge that.

1 It's not how I would have written it.

2 And, Mr. Hillyer, do you have the -- I'll offer it
3 for it's worth and do you have the article, law article?

4 THE COURT: Was it the Markel article?

5 MR. LANGLEY: No, it's another one.

6 THE COURT: Okay.

7 MR. LANGLEY: And I'm going to have to disclaim a lot
8 of things about it. But I think it will be helpful to Your
9 Honor if you want to have some firm understanding.

10 THE COURT: I'm actually on Westlaw. Do you know who
11 wrote it?

12 MR. LANGLEY: So it's not published, and I'll tell
13 you why.

14 THE COURT: Oh, okay. Well, there we go.

15 Mr. Berghman, you're in charge.

16 MR. LANGLEY: So this is an odd -- if you want an
17 authority on UCC Section 9-332(b), this is a draft, and it's a
18 draft because the person who wrote it died. But he was the
19 reporter at the convention for the Revised Commercial Code that
20 was involved in all the 9-332(b) discussions. His name is
21 Steven L. Harris. You can go -- he's been an expert witness.
22 He's done all these type of things.

23 I'm not offering it as an expert testimony, but if
24 the Court wants to take this for persuasion or whatever it
25 wants to do on that end, we're happy to send it to you and

1 provide a copy. I'd give you this one, but we have --

2 THE COURT: Markings on it.

3 MR. LANGLEY: -- markings on it, so I don't really
4 want to do that. But it has -- it talks about stuff that's
5 involved in this and how oddball the situation can become under
6 9-332(b).

7 THE COURT: So how do I get it if it's not published?

8 MR. LANGLEY: How do you get it? I'll send it to
9 you. We were able to --

10 THE COURT: How does anyone get it is my question?

11 MR. LANGLEY: So how we got it --

12 MR. HILLYER: I found it, Your Honor. I can -- it's
13 on like --

14 UNIDENTIFIED SPEAKER: Yeah, the title.

15 MR. HILLYER: Yeah, it's "Making Sense of" --

16 MR. LANGLEY: "Making Sense of UCC Section 9-332(b)"
17 by Steven L. Harris. And he was an expert witness in a
18 Minnesota case, and his bio included this as an exhibit in a
19 published -- something that he was working on in progress.

20 THE COURT: Okay.

21 MR. LANGLEY: And then he died. He died during
22 COVID, so I don't know the circumstances.

23 THE COURT: Okay.

24 MR. LANGLEY: So we don't think --

25 MR. HILLYER: I'll source it out, I mean literally

1 Google Law, like when people laugh about that.

2 THE COURT: Okay.

3 MS. ARGEROPLOS: What is the source, though, if it is
4 not published?

5 MR. HILLYER: It's published by his -- the draft is
6 maintained by the law school. The law school site.

7 UNIDENTIFIED SPEAKER: Is it the September 1st, 2016
8 draft?

9 MR. HILLYER: Yes.

10 MR. LANGLEY: It is the September 1st, 2016 draft.
11 And it's not authoritative. I can't say it --

12 THE COURT: I have it.

13 MR. LANGLEY: Okay. I can't say you can use it
14 authoritatively, but we offer it for whatever use you think
15 it's helpful, to discard it.

16 THE COURT: Okay.

17 MR. LANGLEY: Use it, we offer it out there just as
18 that purpose.

19 THE COURT: We have it.

20 MR. LANGLEY: And Your Honor will see that there's
21 been disagreements under the law on different things, but that
22 9-332(b) is one of those weird situations that, as Mr. Davor
23 says, it doesn't strike me as equitable. It's not necessarily
24 trying to be equitable. It's trying to create finality of
25 payment.

1 And it's recognizing that deposit accounts are unique
2 collateral that don't hold real money. They hold a claim
3 against the Bank, and so there's a unique way to deal with
4 them. They weren't in the UCC Code prior to the revision, and
5 it's something that was added. And it's -- the collusion
6 exception is extremely stringent, meaning that it's almost
7 impossible to prove. That's why there's not case law out
8 there. It's not been done very well.

9 The case law that I do want to offer, Your Honor, is
10 called In re Tuscan Energy, LLC. It's 581 B.R. 681, a 2018
11 case out of the Southern District of Florida.

12 THE COURT: So that's 581 B.R. 681?

13 MR. LANGLEY: 681.

14 THE COURT: Okay.

15 MR. LANGLEY: And so this is an interesting fact
16 pattern where the debtor's attorney knew of the insolvency and
17 knew of a DACA account on the bank accounts that held funds.
18 And the debtor's attorney said give me the money in that DACA
19 account as my retainer so that I can represent you in a
20 bankruptcy case. And the lender came in in that situation and
21 said collusion, he knew about our DACA, he knew that there
22 couldn't be a transfer in this situation, and he took the money
23 anyway. And he shouldn't be allowed to keep it, our lien
24 should attach. And you go through this case and it gets to the
25 end and it says 9-332 applies.

1 A transferee of funds from a deposit account takes
2 the funds free and clear in the interest of the deposit account
3 unless a transferee acts in collusion with the debtor in
4 violating the secured party's rights. Thus, the debtor's
5 counsel acted in collusion with the debtor in violating the
6 rights of Armstrong Bank. Upon payment of the retainer to the
7 debtor's counsel, Armstrong Bank lost a security interest in
8 such funds.

9 So there is authority for applying 9-332(b) in this
10 situation where a lender's collateral is deprived and knowing
11 deprived. But the bankruptcy court went on to say we can't
12 have debtors that can't use their funds when the DACA is on
13 them. They've got to be able to use the retainer. It's not
14 bad faith to take that payment even if you know it. And that's
15 what I think we have here.

16 Before a notice of exclusive control where they have
17 to get the bank's consent, the debtor could use this for
18 whatever money he -- as Mr. Clarke went through, he thinks the
19 October 21 assignment was authorization for the Bank to sweep.
20 It was James Goodman's authorization for the Bank to sweep.

21 And then if we look to the DACA, the DACA says that
22 the Bank shall honor any request by the company to pay out
23 money. So if that was an authorization back in October and the
24 DACA authorized to use it for any purpose, how do you get to
25 the fact that there was a breach of the DACA in relation to the

1 transfer?

2 Now, again, we agree that there was a breach related
3 to the subordination provision. We believe that there may be
4 other breaches.

5 THE COURT: But isn't that the first breach?

6 MR. LANGLEY: It is the first breach.

7 THE COURT: You only have a lien and you only have
8 the ability to sweep and you only have the authority to sweep
9 if you have a proper assignment and pledge. If you don't have
10 any of those things, then you're sweeping at your own risk.

11 MR. LANGLEY: That's correct.

12 And 9-401 says it doesn't stop the transfer again.
13 So the transfer still happens, but there are liability claims
14 that arise from that transfer, that wrongful action. It's
15 essentially either a breach of contract or a tort claim is what
16 the Bondholders have today. They don't have a claim to the res
17 in the 0188 account and just like the estate doesn't have a
18 claim to the res in the 0188 account. That is an account in
19 the name of Prosperity Bank. It's 9-332 applies.

20 We saw in the first exhibit that I gave you that the
21 Bondholders' counsel was specifically worried about this very
22 article, that their rights had been impaired when that transfer
23 occurred so they said put it back in our 3992 account so
24 there's no arguments.

25 Well, we're here having an argument, and we've been

1 doing it for six months. I am tired. I know these other
2 parties are tired. I know Mr. Seidel has been subjected to
3 more than I wish he had to be subjected to in this situation.
4 But we just don't think that the settlement is reasonable here.
5 We think that the net benefit of 38,000 to the estate is not
6 reasonable. We think if the Trustee were to allow FedEx and
7 ARRIS to pursue this under our proposal, that we will go pursue
8 it vigorously and that we think we'll get a \$5-million judgment
9 against Prosperity given the facts we heard today.

10 We understand that the Bondholders may move for
11 relief from stay to try to go get that money at Prosperity, and
12 we can have that fight if we do it. And, again, FedEx and
13 ARRIS are understanding that it's their obligation if they take
14 over this litigation. And so that's where I think we turn back
15 to is Foster is we've met the test for Foster. We've satisfied
16 the obligation here that there's overwhelming majority of
17 creditors opposed, creditors have offered to take over the
18 litigation, and creditors will receive nothing absent the
19 litigation.

20 And our views are reasonable and objective based on
21 the counsel's, Bondholders' counsel's own email that said this
22 is a risk, what could happen if we're impaired. So we
23 understand that the 9-332(b) issue is complicated from a
24 statutory basis. We don't think the actual fraudulent transfer
25 here is a complicated claim. So we do think that the 9-332

1 needs to be studied pretty close so that's why we're offering
2 all these extra sources to get there.

3 And unless Your Honor has additional questions, I
4 think I've talked a lot. And I apologize I talk fast, and
5 Mr. Hillyer tells me to slow down every time so I apologize.

6 THE COURT: Oh, I'm fine. Thank you. I can
7 certainly keep up.

8 I don't think that -- I think we probably talked
9 through the greater points of the Objecting Creditors'
10 arguments. I mean -- well, let me do this before I yap too
11 much. Let me hear from Mr. Muenker.

12 MR. LANGLEY: Very good. Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Langley.

14 MR. MUENKER: Thank you, Your Honor.

15 For the record, James Muenker of DLA Piper on behalf
16 of ARRIS. I promised that I would be brief, and I will keep my
17 comments as brief as possible. I'm not going to repeat
18 anything that Mr. Langley said.

19 But I did want to kind of come back a little bit and
20 talk big picture and maybe put this --

21 THE COURT: Sure.

22 MR. MUENKER: -- dispute in its proper context.

23 And I want to start by what I think was a small
24 compliment that I got from Mr. -- from the Trustee's counsel,
25 Mr. Rukavina, a little bit earlier when he singled us out from

1 the group that was objecting before Your Honor a few weeks ago
2 or a month ago in the dispute that happened in this Court
3 relating to the AMRR transaction.

4 And maybe it wasn't intended as a compliment. Maybe
5 he was just thankful that he only had two angry creditors to
6 deal with instead of three. But I do mention it because we are
7 a little different from the other parties that have been in
8 front of Your Honor in this case. And our view as it relates
9 to this case is a little bit different. Obviously, we have
10 joined in the objection that FedEx has filed, and we stand by
11 that position. And I'm not going to belabor those points that
12 have been made in our papers and in FedEx's counsel's able
13 presentation today.

14 But from our perspective, there was a big distinction
15 between what was going on before Your Honor then and what is
16 happening now. And that distinction is that in that situation
17 in our view, we agree with the Trustee and we recognize the
18 Trustee was in a very difficult spot. And I know I don't have
19 to say this in open court in front of you, you know me well,
20 but I'll do it anyway.

21 I have the utmost respect for
22 Mr. Seidel and I have no doubt that he's acted in good faith
23 throughout this entire process. And he's doing the best job
24 that he thinks that he can do in this case. There's no dispute
25 about that.

1 In the AMRR dispute, it appeared to us that there was
2 no better alternative, and I think that's ultimately what Your
3 Honor concluded as well and that's what Mr. Seidel concluded.
4 And that was kind of one of those situations that's always a
5 challenge for parties in bankruptcy cases, in particular,
6 bankruptcy judges where you've effectively got the melting ice
7 cube situation, right. Something had to be done, it had to be
8 done on short notice, and there wasn't an obvious way to do
9 something different that would result in a better recovery for
10 the estate.

11 So we didn't object to that. I mean some of the
12 other parties did, and I don't begrudge them for doing that.
13 But that was our view then. We feel very differently about
14 what's going on here because we don't think this is a close
15 call and we don't think any of the factors that normally would
16 warrant approval of a settlement like this exist here.

17 To put it in context, Your Honor, obviously we all
18 know we're here on a 9019 settlement.

19 THE COURT: Sure.

20 MR. MUENKER: But 9019 settlements come before Your
21 Honor in all different kinds of ways and in different kinds of
22 cases. They come before Your Honor in Chapter 11 cases as well
23 as Chapter 7 cases. The standard is the same. Your Honor
24 asked a question of Mr. Langley earlier about the deference to
25 creditors. We don't have a veto right. We're not arguing that

1 we have a veto right. But it is a factor.

2 And I think the factor takes on extra significance in
3 a case like this that isn't present in other cases. If we were
4 in a Chapter 11 and the Trustee were bringing you a settlement
5 that saved jobs and provided an ongoing business to preserve,
6 et cetera, et cetera, that would be significant. None of that
7 is here. We're also not -- we're not presented with any of the
8 facts that kind of warranted the approval of the AMR
9 transaction, right, where there was clearly that was the only
10 option that was available. Mr. Seidel has acknowledged, I mean
11 there are significant claims here.

12 I'm not going to talk as much about the Bondholders
13 and Prosperity's position because, quite frankly, they're doing
14 what I would do if I were in their shoes when they've
15 negotiated as great lawyers do really really good settlement
16 terms on behalf of their clients. They're getting a great
17 deal, an absolutely fantastic deal out of this settlement.

18 You've heard testimony about the different types of
19 claims. And although it's been presented to you as one
20 settlement, really there's a couple of different settlements
21 that are going on. Most of the focus has been about the \$4-1/2
22 million transfer to Prosperity for which the estate is only
23 receiving \$150,000, right. And we've heard from Mr. Seidel.
24 He's acknowledged these are complicated issues.

25 Now we think they're not quite as complicated. I

1 think we think we're a little more confident in the strength of
2 the case. And as you've heard, we've offered to take it on in
3 different ways. And if the Court were to deny the Trustee's
4 motion today, I'm sure those conversations would continue and
5 I'm sure that the parties would reach an agreement as between
6 us as to the best way to move that forward on behalf of the
7 estate.

8 But they're doing what they should do, which is
9 advocate for their clients. They're getting a great deal. The
10 parties who aren't getting a great deal are over here on this
11 side. And there's been a lot of talk about the estate, and I
12 think it's important, you know, we remember who the estate is
13 and who the beneficiaries of that estate are. And the
14 overwhelming majority of those parties are sitting over here
15 and they oppose the settlement.

16 And it is our effectively clients who will bear the
17 benefit from these claims, the greatest benefit from these
18 claims, if they are successfully pursued. And it is our
19 respective clients that will bear the cost of losing the very
20 very minuscule value that is coming in if this settlement is
21 approved. And we're happy to take that chance and do that
22 swap.

23 And, respectfully, we think the Court in the context
24 of this case, a Chapter 7 where the unsecured creditors are
25 almost unanimous in opposing the settlement, where the estate

1 objectively is just not getting hardly anything, the Court
2 should pass. The Court should say no. And, unfortunately, I
3 think what has happened despite the best efforts, I'm sure, of
4 Mr. Seidel is that while the settlement terms have improved
5 over time since that motion was kind of originally filed, like
6 a lot of things, they're a product of a bad beginning.

7 And what happened here was really a rush to a
8 settlement on terms that objectively were just not reasonable
9 on any level with virtually nothing coming back to the estate,
10 you know, with almost \$5 million of claims getting released.
11 There have been incremental improvements in that, but it hasn't
12 gotten to the level where again when you factor in the cost of
13 the administrative expenses, there's not going to be any
14 flowthrough to creditors. And nobody's disputed Mr. Langley's
15 math about what the actual money that might be available at
16 some point to the estate from these claims would be.

17 And I think Your Honor has recognized the strength of
18 just by itself the \$550,000 claim that exists against
19 Prosperity. And I think what we've heard over the last couple
20 of days frankly has only made it more and more clear that these
21 complicated issues as it relates to the \$4-1/2 million claim
22 should not be decided in a summary fashion in a mini trial when
23 new critical facts are coming out live on the stand from
24 witnesses that the Trustee was not aware of, that the Trustee
25 has not had an opportunity to investigate.

1 Again, that goes I think in my mind to show that this
2 process is not nearly baked enough to warrant settling at this
3 low dollar amount. And so, respectfully, Your Honor, we don't
4 think this is a close call. I do want to make one other
5 comment about the equities that I've heard.

6 And, look, I mean equity is kind of like beauty.
7 It's in the eye of the holder. This Court is a court of law.
8 And while there are equitable remedies and while there are
9 equitable -- other equitable principles in the law that can be
10 applied, the general notion of equity does not warrant doing
11 something different than what the law requires.

12 We think this is a case about details. We think it's
13 a case where the details matter because the details themselves
14 have very specific legal consequences that flow from them.
15 We've outlined what we think those are in our pleading, so I'm
16 not going to go through them again with you. But we don't
17 really see this as an issue about equity. We see this as an
18 issue where things happened, claims will have arisen and can be
19 prosecuted as a result of the things that happened.

20 Those claims belong to different parties. They may
21 belong to the Bondholders. They may belong to the estate.
22 Those claims should be pursued if they have. They shouldn't be
23 settled now where the estate gets nothing and before these
24 issues can really get fully decided.

25 Unless Your Honor has any other questions, that's all

1 I have to say. We would just encourage Your Honor to deny the
2 motion. We don't think a denial ends anything. It doesn't
3 prevent people from continuing to talk. I know there's always
4 a strong desire to get things done. But when we're faced with
5 as little to get as we are in this case in a Chapter 7 where
6 all the creditors are opposed, we think it should be denied and
7 we should move forward and find a better path. Thank you.

8 THE COURT: Thank you very much.

9 Mr. Rukavina?

10 MR. RUKAVINA: May I, Your Honor?

11 THE COURT: Please.

12 MR. RUKAVINA: The overwhelming majority of creditors
13 oppose this settlement. It's not true. There's 14 noteholders
14 that represent 20 in total that support this settlement. The
15 individual noteholders, they're the creditors.

16 Now their claims aren't \$80 million, but they're not
17 chump change either. So there's at least 14 creditors that
18 support this settlement. And I think we can assume that the
19 vast majority of the creditors that haven't appeared or filed a
20 single page objection, well, maybe they don't support the
21 settlement, they don't oppose it.

22 I do more Chapter 11 as Your Honor knows, and we know
23 how voting on the Chapter 11 plan goes. Just the size of claim
24 matters, but so does numerosity. And at least in this
25 country, part of what I love about it is that you can be a

1 small little guy or the richest guy in the world and when you
2 come to court, your rights are the same.

3 So let's dispel the notion that the overwhelming
4 majority of creditors oppose this. The two biggest creditors
5 do, and Mr. Seidel takes that very seriously. And, again, it
6 pains him, it pains him not only to litigate against them but
7 then to have them suggest any kind of ill motive on his part
8 like self-enrichment. It pains him. But they're not the
9 overwhelming majority of creditors.

10 Equity. Counsel spoke very eloquently about equity,
11 and I happen to be a little bit of a historian. I won't bore
12 the Court but equity started about 100 B.C. in the Roman
13 Republic because some guy --

14 THE COURT: That's exactly where my law school
15 professor started it.

16 MR. RUKAVINA: There you go.

17 THE COURT: We did that for three weeks, but
18 whatever.

19 (Laughter)

20 THE COURT: If you're going to tell me about the
21 Roman 12 tables --

22 MR. RUKAVINA: No, no, no.

23 THE COURT: -- we're going to take a recess.

24 MR. RUKAVINA: No, no, no, no. I'm just going to
25 tell you that it started because the details are murky, some

1 guy forgot to slaughter a cow on a particular day and,
2 therefore, was an insult to God and he was taken for execution.
3 And the tribune said, well, why did you forget to slaughter it.
4 Oh, because I was passed out in a coma.

5 So equity began, as we all know, to avoid unjust
6 consequences from hypertechnicalities. And thank God we have
7 both a court of equity and a court of law. There's a reason
8 why the English common law was severe and why we changed that.

9 While we're talking about equity, I understand the
10 creditors are saying that they're getting nothing out of this.
11 I understand that. Again, as someone that works for Trustees
12 and works for debtors in possession, it's my job to get
13 creditors paid. But it's not fair to suggest that we're
14 getting nothing out of this because of the Trustee's decision.

15 None of these funds, including the 540, would have
16 been theirs, right. All of those funds were bondholder
17 collateral. It goes back to something that Mr. Clarke said.
18 The Bondholders are the only ones that have been harmed here.
19 The Trustee has to take that into account. And I suspect that
20 the Court will take that into account here.

21 Yes, there were \$540,000 in monthly payments over the
22 course of more than a year that went to service Genesis, and
23 that's despicable for many reasons. If those payments had not
24 been made, there would have been \$540,000 more in the bank that
25 would have been swept by the Bondholders when pre-petition they

1 swept all funds. So this is not -- this is perhaps where there
2 is some wisdom in those opinions that limit 548 free and clear
3 assets even though I once again respectfully say that I
4 disagree of those opinions. I understand the wisdom of that.

5 So, again, it hurts Mr. Seidel. It hurts me that
6 we're not returning seven figures to the creditors at this
7 time, our two best -- I'm sorry, our two biggest creditors and
8 lawyers that we think very highly of and talk to multiple times
9 a day and might even have a drink with every now and then. It
10 hurts us that we're not giving them seven figures, but they
11 wouldn't have gotten anything anyway from this. It's the
12 Bondholders that were injured.

13 And, finally, on this notion of good lawyers, et
14 cetera, there's no reason to be ascribing any kind of negative
15 intent on anyone here. Now there's a suggestion that perhaps
16 the surcharge was to arm us to go fight against FedEx. I would
17 ask the Court to just look at a few exhibits, please, during
18 their FedEx exhibits starting at 44.

19 And as Your Honor looks at these exhibits, Your Honor
20 will see that this was a multi-week investigation, multi-week
21 negotiation. There was no rush, there was no rush to a
22 negotiation here. But if Your Honor would look at Exhibit 44,
23 this is some of my communications with Mr. Schaffer.

24 "It's time to cut a deal on the surcharge.
25 Otherwise, the Trustee will not agree to pay the funds over to

1 you until the Court decides that issue. We claim the surcharge
2 for work that we had done, work that we had done during the
3 conversion hearing. We needed a surcharge to arm ourselves.
4 And we were going to have the Court decide the amount of our
5 surcharge" -- it's okay, Your Honor, you can look at it online
6 here.

7 THE COURT: Thank you. Oh, thank you.

8 MR. RUKAVINA: Mr. Guffy's good enough to --

9 THE COURT: Thank you, Mr. Guffy.

10 MR. RUKAVINA: The issue was very simple. We were
11 going to do the deal without the surcharge and let the Court,
12 you, decide what the amount of that surcharge should be.

13 And this was where I told you, and I think the
14 Trustee testified, when Mr. Silverstein finally said in words
15 that I shouldn't repeat in court, come on, Davor, tell me how
16 you got to 100, I said, well, okay, okay, Paul, I'm not really
17 at 100. I'm at 20 or 30. He called my bluff. That's how the
18 100,000 was reached.

19 Now if you'll go to Exhibit 50, please, Mr. Guffy,
20 Exhibit 50, Your Honor is interesting. You have to -- I'm
21 sorry, not 50. Not 50. Go to 57. And you have to go to
22 Prosperity 1111. It's several pages in there. 1111. Let me
23 know when you're there.

24 Okay, right there. Right there. Please stop right
25 there, Mr. Guffy.

1 This is an email from me to Mr. Schaffer and
2 Mr. Silverstein and Mr. Guffy. Please -- no, you have to stop
3 there, Mr. Guffy. Just stop it there.

4 It says, "Attached are the documents as filed. Note
5 the Court set the hearing for April 19th and not the 18th, but
6 I doubt that this will catch an objection." Then I make a joke
7 at Paul's expense.

8 Why would I be thinking that there's no objection
9 that's going to be filed to this, yet Mr. Silverstein is
10 greasing the wheels to the tune of 100 to arm us to litigate
11 against FedEx? I would have said, We're going to have the
12 mother of all battles on this 9019. I need your money to fight
13 it. This is the best evidence that at least the Trustee and I
14 did not think that this was going to catch an objection
15 because, again, we looked at the perfection issue. That's
16 where the Trustee, as we said, paused the proceedings when
17 highly capable lawyers said, wait, Scott, you're getting it
18 wrong.

19 And go to Exhibit 65, please, Mr. Guffy.

20 While we're talking about this surcharge issue --
21 zoom in, please. Thank you.

22 As Your Honor looks at these exhibits, Your Honor,
23 will see multiple emails going back and forth between
24 Mr. Silverstein and Mr. Seidel and Mr. Silverstein and me. You
25 will see that it's a contentious relationship, okay. I like

1 Mr. Silverstein, but he's kind of a tough guy and I'm kind of a
2 tough guy. I have to be very nice and polite to him because I
3 want his surcharge money. So you'll see some in here where I
4 tell him, you know, I'm not going to ratify his assumptions, et
5 cetera.

6 But this is another interesting little email. Here
7 is Mr. Silverstein again ascribing motives to the Trustee, et
8 cetera, et cetera, and I have to tell him Scott takes offense
9 at that email below. It's out of line, is discoverable, and
10 reeks of trying to put the Trustee on unfair weight. This
11 needs to stop. We're not (indiscernible) silvers. We're not
12 doing his bidding for \$100,000 for 16 pieces of silver,
13 whatever it was. We're arguing with him, and we're getting
14 more money from him.

15 Second, if the Bondholders are willing to up the
16 agreed surcharge to 250, we'll proceed. The added funds take
17 into account risk, added work by the Trustee, and the need to
18 pay Schneider to get him -- I say his -- to get him involved.
19 The surcharge again is to arm the estate with badly needed free
20 and clear money. Right now at this point in time, a year into
21 this case, we do not yet know if we have any free and clear
22 money. We think we do, but the Bondholders are going to
23 disagree and eventually that will have to be either resolved by
24 the Court or by agreement.

25 We have many defendants. We have insurance carriers.

1 We have not a penny from which to pay Mr. Schneider on an
2 interim basis or to me. That's not true. I shouldn't say
3 that. We hold a small retainer that the Trustee was able to
4 give us from GNET ATC. I don't want to mislead the Court, and
5 we'll supplement our 2016 disclosures at the appropriate time.

6 So I don't want to mislead the Court. We do have a
7 little bit of a retainer. Other than that, there's not a
8 dollar of free and clear money in this case. Maybe there's
9 500,000, maybe the money from AMRR will be resolved, maybe the
10 Court will find that it's free and clear. That's the purpose
11 of the surcharge, not to fight them but to arm the estate.

12 And, finally, Your Honor, if the Court denies this
13 motion, the Trustee will sue. There's no need to let FedEx do
14 that. The Trustee will sue. I will do my best. I will be up
15 here pounding the table. I will do my best. We think we're
16 going to lose on the perfection issue. You've heard why. We
17 think we're going to lose on the 4.4 issue. I guess
18 Prosperity, you've heard why because they put the money back.
19 We think we're going to win on the \$540,000 issue. Then Your
20 Honor will approve my fees, hopefully, years later in the
21 amount of 200, 250. And it will be net free 50 that we're
22 getting today.

23 Thank you.

24 THE COURT: Thank you, Mr. Rukavina.

25 All right. Thank you all for your arguments. I had

1 no doubt it would be -- oh, Mr. Clarke?

2 MR. CLARKE: I just -- I apologize. I just wanted to
3 respond to one thing or two things, rather if I may. I know I
4 got up to take a break. Your Honor, do you need a minute?

5 THE COURT: No, I don't.

6 MR. CLARKE: Okay. All right.

7 First, during Mr. Langley's argument, an example from
8 the comments of the UCC came up and if I saw that correctly, it
9 dealt with a fact pattern where there is a Bank A and a Bank B.
10 We don't have that here. We have one bank. It was party to a
11 control agreement with the collateral agent for the Bondholders
12 that specifically governs, and so there's no need to go to
13 9-327 to figure out the right and priority of their lien.
14 Section 5 of our DACA says it expressly that our lien is
15 senior.

16 And just as to the allegation that everything in this
17 estate was stolen from FedEx, there's nothing in evidence on
18 that today. You heard an argument that this settlement should
19 be denied because FedEx thinks Mr. Seidel hasn't investigated
20 that. That strikes us as pretty remarkable that they think
21 Mr. Seidel has to do their in investigation on their
22 allegation.

23 They're alleging, a big public company, that the
24 Goodmans stole \$80 million from them. That's an incredible
25 allegation. And they had months to do discovery of Prosperity

1 to trace very single dollar that went into all the operating
2 accounts that would flow through every account subject to a
3 DACA and make a tracing argument. They didn't do that.

4 The one statement we looked at yesterday showed that
5 the funds that went into the 3992 account went in the day
6 before anything from the 4352 account flowed through -- and I'm
7 getting the numbers wrong, but the account from which the 3992
8 account was funded.

9 And that's all, Your Honor, unless you have any
10 questions.

11 THE COURT: No. Thank you, Mr. Clarke.

12 All right. Just give me one moment.

13 I'm going to take the matter under advisement. I
14 think that, picking up on what Mr. Muenker said, this is not a
15 melting ice cube. I mean the money is in a legal hold account
16 at this juncture. I think the parties have given the Court a
17 lot to think about.

18 There is something to be said of essentially facts
19 coming out in the midst of a hearing. This isn't -- I'll date
20 myself. This isn't Perry Mason. you don't get the "gotcha"
21 and "aha" moments very often in court, but there were new facts
22 that came out. I trust the Trustee and found the Trustee's
23 testimony credible when he says, well, at the end of the day,
24 facts did come out from March till now, but they haven't
25 changed my mind.

1 And I do believe each party, the Bondholders and the
2 Trustee on this side and the Objecting Creditors on this side,
3 in the depths of their beliefs, okay, of how much each party
4 believes that they're right. And there is something to be said
5 I guess on both sides, depending on how you flip the coin of
6 whether that means, aha, it means it's right for a compromise
7 or it means that you shouldn't summarily decide it.

8 And so, like I said, there's a lot for the Court to
9 think about. And so I will take the matter under advisement.
10 I cannot encourage the parties enough to continue talking while
11 the Court has this under advisement. I think there are very
12 obvious areas where the parties could compromise here. I think
13 that despite us being in this case, oh gosh, I've lost my
14 docket but for it feels like a year, I think it's over a year
15 because I think we started in September maybe, of 2021 maybe.

16 Yes. Excuse me.

17 UNIDENTIFIED SPEAKER: August.

18 UNIDENTIFIED SPEAKER: September 22.

19 THE COURT: There we go, September 22, exactly.

20 So we've been in this over a year. And, from the
21 Court's perspective, we've only touched upon the motions that
22 the Trustee has brought to date, many of which are in the guise
23 of settlement. And we had a lot of things status
24 conference-wise that came at the Court as part of the motion to
25 convert proceedings.

1 And so I know that there is a lot to unpack from the
2 Trustee's perspective and how that impacts the Bondholders on
3 one side and their liens, the unsecured creditors on their side
4 including FedEx and its arguments for a constructive trust and
5 things of that nature. There's a lot to unpack there.

6 But I'll say what I said in connection with the AMRR
7 settlement. At some point, I really do believe that folks need
8 to be rowing in the same direction because pointing your
9 fingers at one another probably doesn't bring a lot of good to
10 the entirety of the estate. This particular litigation I can
11 only assume has cost the estate and the various creditor
12 constituencies hundreds of thousands of dollars.

13 And do I believe that what the Trustee has brought me
14 is the best recovery possible? No, I don't. I don't. But at
15 the same time, it is a hard-fought settlement. So I'm going to
16 encourage the parties to keep talking. And I want all the
17 parties to be reasonable, but at the same time, I think that
18 the bigger picture here can't be lost which is each of you
19 creditors fought to have this case put into a Chapter 7. You
20 won. It's in a Chapter 7, okay, and you knew when you did that
21 because you're all incredibly sophisticated parties and
22 counsel, and you knew when you did that that you'd have a
23 Chapter 7 Trustee.

24 And at this point, from what I can see with the
25 exception of a motion to pay mediation costs in the tune of

1 \$7,000, every other thing has been fought. Every other thing.
2 So, again, I'm going to encourage the parties to talk. If not,
3 I'll make the tough decisions. It's why I make all this money
4 being a judge.

5 But I encourage the parties to talk because I believe
6 that reaching a settlement might be the bigger ointment for
7 what's going wrong in this case thus far, which is the ability
8 to reach reasonable settlements with the major constituencies,
9 the three biggest creditors in this case, may be what you need,
10 to coin Mr. Rukavina, to go and fight the bad guys because
11 there's insurance proceeds out there, there's some really
12 questionable transfers.

13 I mean I've only seen the top of them, okay. But
14 just watching the money flow around these bank accounts, at one
15 time before I was rolling in the dough up here, I did this
16 litigation so I understand. I can see it. I see what the
17 parties see. But I also think that at some point the parties
18 have to get on the same page.

19 So I will delve head first into 9019 and I think that
20 there is no choice but for me to delve head first into the UCC
21 which I'm very angry about with all of you. I've been offered
22 the opportunity to teach a secured transactions class, and I
23 was like, nope, took it once, I'm all good.

24 But, no, I'm kidding with you guys. I'll delve
25 first, like I said, into 9019, to the UCC, and to your cases

1 and take a hard look at the evidence. But I encourage the
2 parties to talk while I have it under advisement. And, if
3 anything, in terms of a resolution is reached and an agreed
4 order can be entered into, just alert the Court.

5 All right. With that, the Court will stand adjourned
6 for the day, and I'll be on the bench for a minute cleaning up,
7 so you guys feel free.

8 UNIDENTIFIED COUNSEL: Thank you, Your Honor.

9 THE CLERK: All rise.

10 (Proceedings concluded at 3:58 p.m.)

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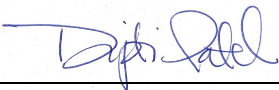
15 C E R T I F I C A T I O N

16 I, DIPTI PATEL, court approved transcriber, certify
17 that the foregoing is a correct transcript from the official
18 electronic sound recording of the proceedings in the above-
19 entitled matter, and to the best of my ability.

20

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22



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24

LIBERTY TRANSCRIPTS

DATE: October 16, 2023

25